

# TEXAS REGISTER

*Volume 21, Number 35 May 14, 1996*

*Pages 4197-4271*



***This month's front cover artwork:***

***Artist: Pedro Torres***

***12th grade***

***PSJA North High School, PSJA ISD, Pharr***

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

Starting with the February 27, 1996 issue, we will display artwork on the cover of each *Texas Register*. The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*. The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register*.

For more information about the student art project, please call (800) 226-7199.

***Texas Register*, ISSN 0362-4781**, is published twice weekly 100 times a year except February 23, March 15, November 8, December 3, and December 31, 1996. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$95, six month \$75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at \$7 per copy in printed or electronic format.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** Director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

**POSTMASTER:** Please send form 3579 changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.

a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(800) 226-7199  
(512) 463-5561  
FAX (512) 463-5569

**Secretary of State** - Antonio O. Garza, Jr.

**Director** - Dan Procter  
**Assistant Director** - Dee Wright

**Circulation/Marketing**  
Tamara Joiner  
Jill S. Ledbetter

**Texas Administrative Code**  
Dana Blanton  
Daneane Jarzombek

**Documents**  
Roberta Knight  
Jamie McCornack  
Patty Webster

**Production**  
Carla Carter  
Ann Franklin  
Mimi Sanchez

**Receptionist**

**Proposed Sections****Texas Department of Commerce**

## Smart Jobs Funds Program

10 TAC §186.104, §186.106.....4207

10 TAC §§186.301, 186.302, 186.306, 186.307....4208

## Tourism Advisory Committee Rules

10 TAC §§196.4, 196.6, 196.10, 196.13, 196.15....4210

**Executive Council of Physical  
Therapy and Occupational  
Therapy Examiners**

## Fees

22 TAC §651.2.....4211

22 TAC §651.3.....4211

**Texas Department of Insurance**

## Life, Accident, and Health Insurance

28 TAC §3.3312.....4212

28 TAC §3.3614.....4212

**Texas Natural Resource  
Conservation Commission**Control of Air Pollution From Nitrogen Com-  
pounds

30 TAC §117.540.....4213

**Texas Municipal Retirement System**

## Practice and Procedure Regarding Claims

34 TAC §121.7.....4216

## Calculation or Types of Benefits

34 TAC §123.5.....4216

## Qualified Domestic Relations Orders

34 TAC §§129.3, 129.6, 129.7, 129.9, 129.10 .....4217

34 TAC §129.13, §129.14.....4218

**Texas Department of  
Transportation**

## Design

43 TAC §§11.50-11.53 .....4220

**Withdrawn Sections****Advisory Commission on State  
Emergency Communications**

## Regional Plans-Standards

1 TAC §251.8 .....4223

**Adopted Sections****Texas Higher Education  
Coordinating Board**

## Student Services

19 TAC §21.953, §21.956 .....4225

**Executive Council of Physical  
Therapy and Occupational  
Therapy Examiners**

## Fees

22 TAC §651.1 .....4225

**Texas Department of Health**

## Purchased Health Services

25 TAC §29.1129 .....4225

**Texas Department of Insurance**

## General Administration

28 TAC §1.88, §1.89 .....4226

28 TAC §§1.88, 1.89, 1.90 .....4226

**Texas Natural Resource  
Conservation Commission**

## General Provisions

30 TAC §261.30 .....4227

Final Approval by Executive Director, Evalua-  
tion of Request for Contested Case Hearing

30 TAC §263.40 .....4227

## Alternative Dispute Resolution

30 TAC §264.20 .....4228

## Procedures Before Public Hearings

30 TAC §265.170 .....4228

## Spill Prevention and Control

30 TAC §§327.1-327.5 .....4228

## **Fire Fighters' Pension Commission**

### **Rules and Regulations of the Texas Statewide Volunteer Fire Fighters' Retirement Fund**

34 TAC §§301.1-301.10..... 4240

## **Texas Commission for the Deaf and Hard of Hearing**

### **Board of Evaluation of Interpreters and Interpreter Certification**

40 TAC §183.573 ..... 4241

## **Tables and Graphics Sections**

Tables and Graphics ..... 4243

## **Open Meetings Sections**

Texas State Board of Public Accountancy..... 4245

State Office of Administrative Hearings ..... 4245

Texas Department on Aging..... 4246

Texas Department of Agriculture..... 4246

Texas Commission on Alcohol and Drug Abuse (TCADA)..... 4246

Texas Bond Review Board..... 4247

Children's Trust Fund of Texas Council..... 4247

Comptroller of Public Accounts ..... 4247

Texas State Board of Examiners of Professional Counselors..... 4248

Texas Education Agency (TEA)..... 4248

State Employee Charitable Campaign..... 4248

Texas Energy Coordination Council..... 4249

Office of the Governor-Criminal Justice Division..... 4249

Texas Health and Human Services Commission..... 4249

Texas House of Representatives..... 4249

Texas Department of Housing and Community Affairs..... 4250

Texas Department of Human Services ..... 4250

Texas Incentive and Productivity Commission..... 4250

Texas Department of Information Services..... 4250

Board of Law Examiners..... 4250

Texas State Library and Archives Commission..... 4251

Texas State Board Medical Examiners..... 4251

Midwestern State University ..... 4251

Texas Natural Resource Conservation Commission..... 4251

Texas Pension Review Board..... 4251

Texas Board of Physical Therapy Examiners..... 4252

Public Utility Commission of Texas ..... 4252

Texas Low-Level Radioactive Waste Disposal Authority..... 4252

Texas Savings and Loan Department..... 4253

Texas Senate.....4253

Telecommunications Infrastructure Fund Board.....4253

Texas State Technical College System .....4253

The Texas State University System.....4253

Texas Department of Transportation.....4254

Board of Lease of University Lands.....4254

Texas Water Development Board .....4254

Texas Workforce Commission.....4255

Texas Youth Commission .....4255

Regional Meetings.....4256

## **In Additions Sections**

## **Texas Department of Agriculture**

Notice of Public Hearings .....4259

## **Children's Trust Fund of Texas Council**

Correction of Error.....4259

## **Office of Consumer Credit Commissioner**

Notice of Rate Ceilings .....4259

## **Texas Education Agency**

Correction of Error .....4259

## **Texas Department of Health**

Notice of Rescission of Order .....4260

## **Health and Human Services Commission**

Public Notices.....4260

## **Texas Higher Education Coordinating Board**

Request for Additional Proposals (RFP)-1996 Grant Program Title II-Dwight D. Eisenhower Professional Development Program (P.L. 103-382).....4260

## **Texas Department of Human Services**

Correction of Error.....4261

## **Texas Department of Insurance**

Notice of Application by ECCA Managed Vision Care, Inc., San Antonio, Texas for Issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas Authorizing Statute .....4261

Notice of Public Hearings .....4261

## **Texas Natural Resource Conservation Commission**

Declaration of Administrative Completeness and Notice of Application to Obtain a Texas Weather Modification Permit .....4261

Enforcement Orders Week Ending May 3, 1996.....4262

Notice of Application for Municipal Solid Waste Management Facilities for the Week Ending May 3, 1996.....	4263
Notice of Application for Waste Disposal Permits for the Week Ending April 29-May 3, 1996.....	4263
Notice of Opportunity to Comment to Permitting Actions.....	4264
<b>Texas Department of Protective and Regulatory Services</b>	
Correction of Error.....	4265
Request for Proposals-Emergency Shelter Services in Region 8.....	4265
<b>Public Utility Commission of Texas</b>	
Notices of Application Filed Pursuant to Public Utility Commission Substantive Rule 23.94.....	4268
Notice of Intent to File Pursuant to Substantive Rules 23.27.....	4269

Notice of Public Meeting.....	4270
Public Notice .....	4270

## **Texas Racing Commission**

Correction of Error .....	4270
---------------------------	------

## **The Texas A&M University System, Board of Regents**

Public Notice .....	4270
---------------------	------

## **Texas Department of Transportation**

Public Hearing Notice.....	4270
----------------------------	------

## **Texas Workforce Commission**

Request for Proposals (RFP) for Statewide Title III Rapid Response Services .....	4271
---	------

# PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the **Texas Register** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

## TITLE 10. COMMUNITY DEVELOPMENT

### Part V. Texas Department of Commerce

#### Chapter 186. Smart Jobs Fund Program

##### Subchapter A. General Provisions

##### • 10 TAC §186.104, §186.106

The Texas Department of Commerce proposes amendments to §186.104 and §186.106 implementing the Smart Jobs Fund Program authorized by the Texas Government Code, Chapter 481, Subchapter J, as amended. The rules are proposed under the Texas Government Code, Chapter 481, as amended, and the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, Rulemaking, as amended. Section 186.104, concerning Definitions, deletes the definition for "skills" because it is not required in administering the program. Changes are being made to the definitions for "existing job" and "new job" to allow a time period of one year instead of six months which will assist more businesses in meeting requirements of the program. Changes are being made to "job-related occupational skills" to give employers more flexibility in defining the job-related occupational skills needed to perform the duties and task required for a specific job. The definition for "technological change" is being amended to reflect that the result of technological change enhances production efficiency or product performance instead of product marketability. Changes could affect product marketability but may not necessarily be a technological change. A minor grammatical change is being made to the definition for "minority employer status for application purposes." Section 186.106, concerning Modifications, is being amended by deleting the wage increase percentage of 5.0% and allowing the employer to specify the wage increase modification that it is requesting the executive director to make. This may give businesses which provide adequate justification for the wage modification more flexibility in meeting the wage requirements of the program.

W. Lane Lanford, Director of Business and Fiscal Services, has determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules are reduced costs for employers receiving grants that receive a wage modification from the executive director pursuant to the Act, §481.155(d). The actual reduction in wage costs to an employer receiving a grant cannot be quantified, because we do not know how much of a decrease will be justified by the employer. There are no anticipated cost increases or decreases to state or local government as a result of enforcing or administering the rules. The rules are not anticipated to create either a loss or an increase in revenue to state or local government. No costs will be incurred by any member of the public other than those applying for grants who may have minimal costs in submitting an application. Costs to employers receiving grants will be significantly offset by the grant training dollars received.

Mr. Lanford also has determined that there will a public benefit for each of the first five years that the rules are in effect. The anticipated public benefit is that more employers may be able to access the program due to the changes to the definition of "existing job" and "new job." Further, some employers may pay a smaller wage increase to existing employees under the wage modification proposed to §186.106, Modifications.

The cost to small businesses of complying with the amended rules will be no different than the costs incurred by other employers.

Written comments on the proposed rules should be submitted to Renee Mauzy, Assistant General Counsel, Texas Department of Commerce, 1700 Congress Avenue, Suite 136; or P.O. Box 12728, Austin, Texas 78711-2728 within 30 days of publication of the proposed rules. Comments may be faxed to Ms. Mauzy at (512) 936-0415. Comments received more than 30 after publication of the rules will not be considered by Commerce.

The amendments are proposed under the authority of the Texas Government Code, Subchapter J, §481.153, which requires the Texas Department of Commerce Policy Board to adopt rules to implement the Smart Jobs Fund Program, and the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, Rulemaking, as amended, which prescribes the standards for agency rulemaking.

Texas Government Code, Chapter 481, Subchapter J is affected by this proposal.

*§186.104. Definitions* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Existing job—A position for which there has been an incumbent employee or a job opening for more than **one year** [six months] prior to the date the project is scheduled to begin.

Job-related occupational skills—The knowledge and abilities the employer specifies as necessary **to perform the duties and tasks required** for a specific job [, and may include workplace skills such as the productive use of resources, interpersonal communication, information, systems, and technology]. These skills specifications shall be consistent with the requirements of the employer's business plan.

New job—A position which did not exist in this state in the employer's business and which had no incumbent employee for more than **one year** [six months] prior to the date the project is scheduled to begin. This may include an employee in an existing job who is being retrained for a new job with new skill requirements.

[Skills—Aptitudes or abilities that are necessary to execute or perform a job, including the ability to use one's knowledge effectively and readily. Skills also include "job-related basic skills" and "job-related occupational skills" as previously defined.]

Technological change—An advance in product design or production technique that enhances production efficiency or product **performance** [marketability].

*§186.106. Modifications.* For purposes of modifying the requirements of §481.155, the executive director may give priority to employers that are securing training for existing jobs if they are a small business or are securing training for manufacturing or emerging occupations. Such a modification would reduce the **10%** wage increase called for in 481.155(c) [from 10% to 5.0%] over the wage in effect on the day before the date on which the project is scheduled to begin for that job. To qualify for this modification, the employer

must specify the wage increase modification that it is requesting the executive director to make, including a justification for the requested wage increase modification. In addition, the employer must certify that it is required to reduce or eliminate the employer's work force because of reductions in overall employment within an industry or a substantial change in the skills required to continue the employer's business because of technological changes or other factors. Grant amounts awarded for such modifications may not, in any fiscal year, exceed 10% of the total dollar amount of the grants awarded under the program in that year.

This agency hereby certifies that the proposal has been reviewed by legal council and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606173      Peter A. Inman  
Chief of Staff  
Texas Department of Commerce

Earliest possible date of adoption: June 14, 1996

For further information, please call: (512) 936-0178



## Subchapter C. Application for Grants

### • 10 TAC §§186.301, 186.302, 186.306, 186.307

The Texas Department of Commerce proposes amendments to §§186.301, 186.302, 186.306, and 186.307 implementing the Smart Jobs Fund Program authorized by the Texas Government Code, Chapter 481, Subchapter J, as amended. The rules are proposed under the Texas Government Code, Chapter 481, as amended, and the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, Rulemaking, as amended.

Section 186.301, concerning Eligibility, is being amended so that an employer that is rendering services to a Smart Jobs Fund contractor and receiving grant monies for those services is not eligible to receive a grant during the contract period. This will ensure that an employer already receiving grant monies is not eligible for additional grant monies as a contractor during the same time period. This will avoid the possibility of an employer being paid twice for the same trainees during the period of a contract, once to train the trainees and again if those same trainees provide training services to another Smart Jobs Fund contractor. This section is also being amended to increase the cost per job from \$1,454 to \$2,500 for a large business. An explanation is added to clarify how the cost per job is calculated. The cap on the amount of a grant is increased from 2.5% to 5.0% of the total funds appropriated for the biennium. Since September 1, 1995, applications have been received requesting grant monies to train 1 trainee up to 3,119 trainees with a median cost per job of \$2,250. The increase in the cost per job and the amount of a grant will allow more flexibility in meeting employers' training needs. A grammatical change is also being made to the definition for large business to correctly reflect the definition for small business.

Section 186.302, Application Requirements, is being amended to correctly reflect that a consortium is composed of two or more providers. This section is also being amended to correctly reflect the Act, §481.155(d). An employer may submit an application for a grant for all occupations, not just emerging occupations, within an industry that promotes jobs in high technology areas where technological changes or other factors contribute to substantial changes in the skills required to continue the employer's business. An employer may also submit an application to secure training for occupations in an industry, especially manufacturing, where the employer is required to reduce or eliminate its work force because of reductions in overall employment within that industry, in cases where the Smart Jobs Fund project would directly contribute to the retention of those positions for which training was provided. The following additions were also made: job-related basic skills must be integrated as part of the job-related occupational skills training curricula as currently stated in the definition for "job-related basic skills"; an application must specify the training provider for each curricula as this information is needed to compare the project budget to the training plan; and clarification is provided on how the cost per job is calculated. The language is being changed to state that the grant

amount is divided by the number of jobs, instead of trainees, to provide consistent language throughout the rules. The cost per job is also being referred to in §186.301(b) and §186.302(d) (5). This section is also being amended to delete information required in the application on whether the trainees are women or minority group members, and if so, to which minority group the trainees belong as this information is obtained after a contract is executed, not during the application process.

Section 186.306, Funding Priorities, is being amended to delete the following funding priorities in the scoring mechanism: one or more employers acting in partnership with a consortium composed of one or more providers as all employers meet this criteria; quality of the business and training plan since all business and training plans must have all the information required to receive a grant; the role and status of the training provider including public education and Texas-based providers in order to reflect the change in §186.307, Provider Eligibility; and whether the trainees are Texas residents since all employers must certify in the application that they will give priority to Texas residents. This section is also being amended to clarify that priority is given to funding applications which will have a regional impact as a result of the project or that will train for manufacturing occupations in order to reflect the intent of the legislation. A minor grammatical change is also being made.

Section 186.307, Provider Eligibility, is being amended to delete the requirement that providers meet the definition of "existing employer" which will allow businesses more flexibility in choosing their training providers and to delete that employers new to Texas may provide training to their own employees with grant funds, because this is not needed since the requirement that providers meet the definition of "existing employer" is being deleted. This section is also being amended to add that an employer that has a contract under the Smart Jobs Fund cannot receive Smart Jobs Fund grant monies for services rendered to another Smart Jobs Fund contractor during the contract period. This will ensure that an employer receiving grant monies as a contractor is not eligible for additional grant monies as a provider during the same time period. This will avoid the possibility of an employer being paid twice for the same trainees during the period of a contract, once to train the trainees and again if those same trainees provide training services to another Smart Jobs Fund contractor.

W. Lane Lanford, Director of Business and Fiscal Services, has determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules are that employers receiving training grants may receive larger grants, or more money per employee trained, because the cost per job has increased and the cap on the amount of a grant has increased.

There are no anticipated cost increases or decreases to state or local government as a result of enforcing or administering the rules. The rules are not anticipated to create either a loss or an increase in revenue to state or local government.

Mr. Lanford also has determined that for each year of the first five years the rules are in effect the public benefit will be that the rules may enable more employers to access the program and to perhaps receive a higher training grant award because of the increases in the cost per job and cap on the grant amount. The cost to small businesses of complying with the amended rules will be no different than the costs incurred by other employers.

Written comments on the proposed rules should be submitted to Renee Mauzy, Assistant General Counsel, Texas Department of Commerce, 1700 Congress Avenue, Suite 136; or P.O. Box 12728, Austin, Texas 78711-2728 within 30 days of publication of the proposed rules. Comments may be faxed to Ms. Mauzy at (512) 936-0415. Comments received more than 30 following publication of the rules will not be considered by Commerce.

The amendments are proposed under the authority of the Texas Government Code, Subchapter J. §481.153, which requires the Texas Department of Commerce Policy Board to adopt rules to implement the Smart Jobs Fund Program; and the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, Rulemaking, as amended, which prescribes the standards for agency rulemaking. Texas Government Code, Chapter 481, Subchapter J is affected by this proposal.

*§186.301. Eligibility.*

(a) The department shall evaluate applications submitted by one or more employers or by one or more employer organizations, labor organizations, community-based organizations or providers acting in partnership with one or more employers. Only businesses that have been in operation for at least one year are eligible to receive a grant. **An employer that is rendering services to a Smart Jobs Fund contractor and receiving grant monies for these services is not eligible to receive a grant during the contract period.** All businesses must demonstrate financial soundness and fulfillment of state tax obligations before they can receive a grant from the department.

(b) The cost per job may not exceed \$2,500 for any business with 100 or more employees and more than \$1 million in annual gross receipts. The cost per job is calculated by dividing the total Smart Jobs Fund grant amount by the number of jobs. No grant may be awarded for more than 5% of the total funds appropriated for the biennium. [No business with 100 or more employees or more than \$1 million in annual gross receipts may receive more than the requested Legislative Budget Board efficiency measure of \$1,454 per job for the 1996-1997 biennium. No grant may be awarded for more than 2.5% of the total funds appropriated for the biennium.]

*§186.302. Application Requirements.*

(a) One or more employers; one or more employers acting in partnership with an employer organization, labor organization, or community-based organization; or one or more employers acting in partnership with a consortium composed of one or more providers may submit an application for a grant under the Smart Jobs Fund:

(1) (No change.)

(2) to secure training for [emerging] occupations, **especially emerging occupations**, within an industry that promotes jobs in high technology areas where technological changes or other factors contribute to substantial changes in the skills required to continue the employer's business; or

(3) to secure training for occupations in an industry, especially in manufacturing, where the employer is required to reduce or eliminate its work force because of reductions in overall employment **within that industry**, in cases where the Smart Jobs Fund project would directly contribute to the retention of those positions for which training was provided.

(b)-(c) (No change.)

(d) Business and Training Plan. Grant funds awarded hereunder shall pay for job-related occupational skills training and job-related basic skills training that enhance the employer's ability to carry out its business plan. **Job-related basic skills must be integrated as part of the job-related occupational skills training curricula.** An approved business and training plan will become part of any contract for grant funds awarded. The business and training plan will specify project start dates and project end dates. Up to four project periods may be specified by the employer. Each business and training plan must contain the information required by the Smart Jobs Fund, §481.156(b). Each business and training plan shall also:

(1) (No change.)

(2) describe the skills training curricula for each project, including the number of hours each participant will spend in classroom training, on-the-job training, and/or other employer-designed training components, to be funded by the grant **and specify the training provider for each curricula;**

(3) (No change.)

(4) describe the method(s) used to assess each participant's competencies in the skills for which the project will train both

immediately prior to the start date of the project and upon completion of the training;

(5) specify the projected cost per **job which is calculated by** [person trained based on] dividing the total Smart Jobs Fund grant amount by the number of **jobs** [trainees];

(6)-(7) (No change.)

(e) The application shall include the following information:

(1) whether the employer is a small business as defined by the Texas Government Code, §481.101(3); **and**

(2) whether the employer is a woman or minority group member, and if so, to which minority group the employer belongs[; and

[(3) whether the trainees are women or minority group members, and if so, to which minority groups the trainees belong.]

(f)-(g) (No change.)

*§186.306. Funding Priorities.*

(a) Only program objectives and priorities outlined in the Smart Jobs Fund Act and General Provisions will be considered in evaluating applications for funding, including:

(1) (No change.)

(2) Fifty percent of the money spent under the program shall be used for projects that assist employers with **fewer** [less] than 100 employees or less than \$1 million in annual gross receipts.

(3) (No change.)

(b) The department will develop a scoring mechanism that gives priority to funding applications based on the following criteria:

(1) business status, including small and/or minority businesses, existing businesses, and businesses located in an Enterprise Zone;

[(2) one or more employers acting in partnership with a consortium composed of one or more providers;]

(2) [(3)] statewide distribution of businesses receiving grants under the program and first-time grantees;

(3) [(4) quality of the business and training plan and] the **regional** impact of the project, [including the total dollars invested by the businesses,] the international impact and involvement in defense conversion activities;

[(5) the role and status of the training provider(s), including public education and Texas-based providers;]

(4) [(6)] the quality of the jobs, including **manufacturing occupations and** occupations in technological areas, wage levels, benefits, and whether the trainees are Texas residents[, including residents] formerly sentenced to the institutional division of the state jail division of the Texas Department of Criminal Justice.

*§186.307. Provider Eligibility.* Providers shall be required to demonstrate to the department with certification that they have been in business for at least one year. **An employer that has a contract under the SmartJobs Fund can not receive Smart Jobs fund grant monies for services rendered to another Smart Jobs Fund contractor during the contract period. [and that during that one year period they have met the definition of "existing employer" as set forth in the definitions to the Smart Jobs Fund. Employers new to Texas may provide training to their own employees with grant funds.]**

This agency hereby certifies that the proposal has been reviewed by legal council and found to be within the agency's authority to adopt. Issued in Austin, Texas, on May 3, 1996.



Earliest possible date of adoption: June 14, 1996

For further information, please call: (512) 936-0178



## Chapter 196. Tourism Advisory Committee Rules

### • 10 TAC §§196.4, 196.6, 196.10, 196.13 and 196.15

The Texas Department of Commerce proposes amendments to §§196.4, 196.6, 196.10, 196.13 and 196.15 of the Tourism Advisory Committee rules. The proposed amendments are necessary to conform the rules to recent amendments made to the Tourism Advisory Committee by-laws. Section 196.4, Regular Members, is being amended to increase the number of regular Tourism Advisory Committee members from fourteen to seventeen. The three additional members are to be appointed by the executive director of the Texas Department of Commerce to provide additional ethnic, regional and business sector diversity within the membership of the Tourism Advisory Committee. Section 196.4 is also being amended to change the names of several of the geographic regions of the state from which Tourism Advisory Committee members are selected to coincide with new tourism marketing regions that are being used by the State's major tourism-related agencies.

Section 196.6, Elections and Members, is being amended to provide that the members are selected solely by residents of the regions which the members represent. This change is being made to insure that each region's representatives fully represent the people living within each region.

Section 196.10, Length of Term, is being amended to provide that the three members appointed by the executive director begin their two year terms at the end of the election announcement at the annual travel Summit meeting.

Section 196.13, Open Records Act, is being amended to refer instead to the Public Information Act, due to the renaming of the Act by the 74th Legislature.

Section 196.15, Dissolution, is being amended to delete the reference to August 31, 1995, because that date has already passed. Additionally, the word "each" is being added before the word "biennium" to clarify that the Tourism Advisory Committee is dissolved each biennium.

Darren Rudloff, Tourism Division Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal impact on local or state government. Mr. Rudloff estimates that there is no significant cost to the Texas Department of Commerce in enforcing the amended rules.

Mr. Rudloff also has determined that for the first five-year period the rules are in effect the public benefit is that the Tourism Advisory Committee may more accurately reflect the ethnic, regional and business sector diversity of the State than it does under the existing rules. There is no cost to the public in complying with the amended rules. There is no cost to small businesses under the amended rules.

Mr. Rudloff also has determined that there is no local employment impact associated with the amended rules.

Written comments on the rules may be submitted within thirty days of publication of the rules to Renee Mauzy, Assistant General Counsel, by mailing the comments to Ms. Mauzy at P.O. Box 12728, Austin, Texas 78711-2728, or by faxing the comments to her at (512) 936-0415. Neither oral comments nor comments received more than thirty days after publication of the rules will be considered by Commerce.

The rules are proposed under the authority of Government Code §§481.0044, 481.005 and 481.007, Texas Civil Statutes, Article 6252-33, and the Administrative Procedure Act, Government Code, Chapter 2001, Subchapter B.

Government Code §481.007 and Texas Civil Statutes, Article 6252-33 are affected by the rules.

**§196.4. Regular Members.** The Committee shall consist of no more than **17** [14] regular members, each of whom shall be actively involved in some aspect of the Texas tourism industry. [Fourteen of] **The** [the] regular members shall represent the seven regions of the state, as delineated by the department, on the basis of two members per region: The Panhandle **Plains**, [North Central] **Prairies and Lakes**, [West Texas] **Big Bend Country**, [Central Texas, East Texas,] **Hill Country, Piney Woods**, South Texas Plains, and the Gulf Coast. Members representing a region must be residents of the region. **The remaining three members will be appointed by the department's executive director to balance diversity of representation.**

**§196.6. Elections and Members.** Seven regular members of the advisory committee shall be elected each year, one from each of the seven regions, **by residents of their region**. Requests for nominations to advisory committee membership shall be widely solicited from the Texas tourism industry through the department's Tourism Division publications beginning in 1995, at least four months prior to the election, and shall bear a return deadline of July 1. Beginning in 1995, nominations will be handled through a nominating committee composed of the department's Tourism Division Director and two committee members (one of whom may be ex officio) who are appointed by the chair at least two months prior to the election. The nominations committee shall screen the names submitted, and place in nomination no more than three names for each of the available committee memberships. Anonymous ballots will be distributed statewide, mailed through the department's Tourism Division. **Residents of a region will vote only on their regional representative.** The announcement of new members will take place at the annual Texas Travel Industry Association's "Summit."

**§196.10. Length of Term.** The term of each regular member shall be for two years, beginning immediately upon announcement at the annual summit and ending at the summit of the second year following the member's election to the committee, or until replaced by a newly elected member, except that the terms of the initial committee shall end at the Summit of the second and the third year following their election, as previously drawn by lot. **Members appointed by the executive director will start their two year term at the end of the election announcement at the annual Summit.** Members may succeed themselves on the committee for only one additional term. Terms for ex officio committee members shall be for the length of the appointment. All terms are subject, however, to the provisions of these rules.

**§196.13. Public Information [Open Records] Act.** All written or other recorded information collected, assembled or maintained by the committee or committee members pertaining to the committee's business is public information, and is subject to the **Public Information** [Open Records] Act. The Chair should assure that committee records are on file with the department's Tourism Division.

**§196.15. Dissolution.** The committee shall be dissolved at the end of the State biennium [August 31, 1995] unless dissolved earlier by act of the executive director, or by two-thirds vote of the committee members at a regular or special meeting. The committee may be reinstated at the beginning of each succeeding biennium by affirmative vote of the department's policy board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on May 3, 1996.

TRD-9606137

W. Lane Lanford  
Director, Business and Fiscal Services  
Texas Department of Commerce

Earliest possible date of adoption: June 14, 1996

For further information, please call: (512) 936-0178

◆        ◆        ◆

## TITLE 22. EXAMINING BOARDS

### Part XXVIII. Executive Council of Physical Therapy and Occupational Therapy Examiners

#### Chapter 651. Fees

##### • 22 TAC §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes an amendment to §651.2, concerning Physical Therapy Board Fees. This amendment replaces the examination fee, as the board no longer administers the exam, with a fee for reapplication to register for the exam. This amendment also removes fees for administrative services provided by the Texas Board of Physical Therapy Examiners. Those fees are being published under §651.3, Administrative Services Fees.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on local or state government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will standardization and clarification of fees charged for board administrative services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Nina Hurter, Executive Council of Physical Therapy and Occupational Therapy Examiners 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The amendment is proposed under the Texas Civil Statutes, Article 4512e-1, which provide the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to promulgate rules.

Texas Civil Statutes, Article 4512e, is affected by this amendment.

##### *§651.2. Physical Therapy Board Fees.*

###### (a) Application.

- (1) Physical therapist—\$150;
- (2) Physical therapist assistant—\$100.

###### (b) Application to Retake the Examination.

- (1) Physical Therapist—\$25;
- (2) Physical Therapist Assistant—\$25.

###### [(a) Examination.

- [(1) Physical therapist—\$185;
- [(2) Physical therapist assistant—\$185.]

###### [(b) Application.

- [(1) Physical therapist—\$150;
- [(2) Physical therapist assistant—\$100.]

###### (c)-(d) (No change.)

###### [(e) Duplicate License.

- [(1) Physical therapist—\$25;
- [(2) Physical therapist assistant—\$25.

###### [(f) Transfer.

- [(1) Physical therapist—\$40;

- [(2) Physical therapist assistant—\$40.]

###### (e)[(g)] Registration of Facilities.

- (1) First facility—\$300;
- (2) Additional site—\$100.

###### (f)[(h)] Renewal of Facility Registration.

- (1) First facility—\$300;
- (2) Additional site—\$100.

###### [(i) Duplicate Facility Registration Certificate—\$25.]

(g)[(j)] Approval of Continuing Education Program for CEU Credit—\$40 per program.

[(k) Fees for Applicants Who Fail the Examination—Each time an applicant retakes the examination the examination fee must be paid again.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 1, 1996.

TRD-9606030

John P. Maline  
Executive Director  
Executive Council of Physical Therapy and  
Occupational Therapy Examiners

Earliest possible date of adoption: June 14, 1996

For further information, please call: (512) 305-6900

◆        ◆        ◆

##### • 22 TAC §651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes new §651.3, concerning Administrative Services Fees. This new section sets fees for administrative services performed by the boards represented on the Executive Council.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on local or state government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be standardization and clarification of board administrative services fees. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Nina Hurter, Executive Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The new section is proposed under the Texas Civil Statutes, Article 4512e-1, which provide the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to promulgate rules.

Texas Civil Statutes, Article 8851 and Article 4512e, are affected by this new section.

##### *§651.3. Administrative Services Fees.*

- (a) Verification/Transfer of Licensure—\$40.
- (b) Duplicate/Replacement License—\$25.
- (c) Duplicate Renewal Certificate/Wallet Card—\$25.
- (d) Duplicate of Facility Registration Certificate—\$25.
- (e) Reinstatement of Suspended or Revoked License—\$50.
- (f) Insufficient Funds Check Fee—\$25.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 1, 1996.

TRD-9606031      John P. Maline  
Executive Director  
Executive Council of Physical Therapy and  
Occupational Therapy Examiners

Earliest possible date of adoption: June 14, 1996

For further information, please call: (512) 305-6900

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 3. Life, Accident, and Health Insurance

##### Subchapter T. Minimum Standards for Medicare Supplement Policies

###### • 28 TAC §3.3312

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance proposes repeal of §3.3312, concerning minimum standards for Medicare supplement policies. Repeal of the section is necessary because the provisions of §3.3312 provide for transitional requirements for the conversion of Medicare supplement insurance benefits and premiums to conform to Medicare program revisions, including the enactment in 1988, and subsequent repeal in 1989, of the Medicare Catastrophic Coverage Act of 1988. Such provisions are no longer necessary or essential to the overall regulatory framework for Medicare supplement coverages.

Tyrette Hamilton, deputy commissioner for the life/health group, has determined that for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal, and that there will be no effect on local employment or the local economy.

Ms. Hamilton also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be greater uniformity with the federal regulations. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposal must be submitted within 30 days after publication of the proposed repeal in the *Texas Register*, to the Chief Clerk, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Tyrette Hamilton, Deputy Commissioner, Life/Health Group, Mail Code 106-1A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The repeal is proposed under the Insurance Code, Articles 3.74 and 1.03A. Article 3.74 provides that the department shall issue reasonable rules to establish specific standards for provisions of Medicare supplement policies, including requirements that are at least equal to those required by federal law, and to establish standards to the extent necessary for the state to obtain or retain certification as a state with an approved regulatory program under 42 U.S.C. §1395ss. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

The following article is affected by this proposal: Insurance Code, Article 3.74.

*§3.3312. Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 1, 1996.

TRD-9606153      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Earliest possible date of adoption: June 14, 1996

For further information, please call: (512) 463-6327

## Subchapter W. Miscellaneous Rules for Group and Individual Accident and Health Insurance

### Required Disclosure Statement for Policies that are not Medicare Supplement Policies

#### • 28 TAC §3.3614

The Texas Department of Insurance proposes new §3.3614, relating to the required disclosure statement for policies that are not Medicare supplement policies. The section is necessary to transfer from Subchapter T of this chapter to Subchapter W of this chapter the notice requirements for the content and format of the required disclosure statement which must be provided to inform prospective buyers of health insurance policies about the nature and character of certain health coverages that are not Medicare supplement coverages. The transfer of such notice requirements is necessary because the notice proposed in §3.3614 relates to coverages which are not Medicare supplement coverages, while Subchapter T contains provisions designed to address minimum standards for coverages which are primarily designed, marketed and sold to supplement Medicare benefits. Proposed §3.3614 sets out the purpose, scope, form and language of the notice and disclosure.

Tyrette Hamilton, deputy commissioner for the Life/Health Group, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government, or for small businesses, resulting from enforcement or administration of the new section, and that there will be no effect on local employment or the local economy.

Ms. Hamilton also has determined that for each year of the first five years the new section will be in effect the public benefit anticipated as a result of enforcing the new section will be the effective disclosure to prospective insureds of the fact that certain health coverages are not Medicare supplement coverages, thereby making it possible for the consumer to make a more informed choice regarding the decision to purchase health coverages.

There is no anticipated economic cost to persons who are required to comply with the proposed section, because the subject matter and required provisions of the proposed new section are identical to the subject matter and required provisions currently found in §3.3308 of this title (relating to Required Disclosure Provisions).

Comments on the proposal may be submitted to the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104, Mail Code 113-2A, within 30 days following the date of this publication. An additional copy of comments should be submitted to Tyrette Hamilton, Deputy Commissioner, Life/Health Group, P.O. Box 149104, MC 106-1A, Austin, Texas 78714-9104. A request for public hearing on the proposed section should be submitted separately to the Office of the Chief Clerk.

The new section is proposed pursuant to the Insurance Code, Articles 3.74, 3.70-3 and 1.03A. Article 3.74, §5(d) provides that the department may promulgate reasonable rules for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds, subscribers, or enrollees that particular coverages are not Medicare supplement coverages. Article 3.70-3 authorizes the department to adopt rules and regulations for the filing an submission of health insurance policies as are necessary, proper or advisable. Article 1.03A authorizes the Commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

The proposed new section affects regulation pursuant to the following statute: Insurance Code, Articles 3.70-3 and 3.74

§3.3614. *Notice Regarding Policies or Certificates Which are not Medicare Supplement Policies.* Any accident and sickness insurance policy, subscriber contract, or evidence of coverage other than a Medicare supplement policy, disability income policy, or a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, (42 U.S.C. §§1395ss, et seq.) issued for delivery in this state to persons eligible for Medicare shall be accompanied by a notice to the insureds under the policy, subscriber contract, or evidence of coverage that the policy, subscriber contract, or evidence of coverage is not a Medicare supplement policy or certificate. The notice shall either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate, subscriber contract, or evidence of coverage delivered to insureds. The notice shall be in no less than 12-point type and shall contain the following language: "THIS (POLICY, CERTIFICATE, SUBSCRIBER CONTRACT, OR EVIDENCE OF COVERAGE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 1, 1996.

TRD-9606152      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Earliest possible date of adoption: June 14, 1996

For further information, please call: (512) 463-6327

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 117. Control of Air Pollution From Nitrogen Compounds

##### Subchapter D. Administrative Provisions

###### • 30 TAC §117.540

The commission proposes an amendment to §117.540, concerning Phased Reasonably Available Control Technology. Chapter 117 was originally adopted in May, 1993 in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments for states to apply reasonably available control technology (RACT) requirements to major sources of nitrogen oxides (NO<sub>x</sub>). Chapter 117 applies in the following counties designated nonattainment for ozone: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller (Houston/Galveston (HGA) ozone nonattainment area) and Hardin, Jefferson, and Orange (Beaumont/Port Arthur (BPA) ozone nonattainment area).

In addition, the 1990 FCAA amendment requires states to either adopt the Federal Clean Fuel Fleet (FCFF) program, or implement a program which demonstrates equivalent emission reductions to the federal program. In 1995 the 74th Texas Legislature, through the passage of Senate Bill (SB) 200, amended the requirements of the Texas Clean Air Act (TCAA), Chapter 382, Subchapter F, Health and Safety Code, affecting the state's alternative fuels program. This legislation directs the commission to adopt rules to implement the requirements of the statute. The current rulemaking is proposed, as required by SB 200, to implement an economic incentive program to help reduce vehicle emissions and provide flexibility for fleet operators.

The amendment to §117.540 updates references to the Chapter 117 final compliance date to May 31, 1999, correspondingly adjust all intermediate deadlines, and delete an obsolete rule reference. Also, §117.540(b) is deleted in order to eliminate obsolete rule requirements.

In addition, the amendments add a new subsection, renumbered as §117.540(c), allowing the use of clean-fuel vehicle credits, as mandated by SB 200, to meet Chapter 117 requirements on an interim basis. These aspects of the amendment will be discussed separately. Subsections in §117.540 are renumbered accordingly.

Regarding the first change of these amendments, Section 182(f) of the FCAA requires states to adopt rules that apply RACT by May 31, 1995 to major stationary sources of NO<sub>x</sub> in ozone nonattainment areas classified moderate or above, unless it can be demonstrated that reducing NO<sub>x</sub> emissions would not contribute to attainment of the ozone standard in those areas. The commission adopted NO<sub>x</sub> RACT rules in Chapter 117, effective June 9, 1993, for the HGA and BPA areas, based on the strength of preliminary indications of resulting benefits. By late March, 1994, initial runs of the Urban Airshed Model (UAM) predicted that NO<sub>x</sub> reductions would be counterproductive to ozone control in portions of the HGA and BPA areas.

For this reason, the commission extended the Chapter 117 final compliance date to May 31, 1997 in rulemaking effective September 22, 1994. This extension delayed the implementation of NO<sub>x</sub> RACT in HGA and BPA to allow time for UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST) study. Completion of UAM modeling is now planned by early 1997, later than originally projected. Consequently, the commission further extended the Chapter 117 final compliance date to May 31, 1999 in rulemaking effective February 1, 1996.

In related actions, the agency has submitted a petition to the EPA requesting a one-year extension of the temporary §182(f) NO<sub>x</sub> exemption for the HGA and BPA areas, until December 31, 1997. The petition also requests extension of the Chapter 117 final compliance date to May 31, 1999. The agency has proceeded with rulemaking to extend the Chapter 117 deadline before EPA approves the §182(f) extension, in order to give industry sufficient advance notice of the changes. EPA is expected to take final action on the state's extension request by December 31, 1996.

Section 117.540 was adopted in August, 1993 to allow affected sources to petition the agency for additional time past the original May 31, 1995 compliance date to implement the Chapter 117 requirements. The rule section was developed in response to companies' concerns that in spite of good faith efforts to achieve compliance by May 31, 1995, in some cases delays could be encountered, and that a procedure was needed to allow a phased approach to implementing the rule requirements. At the time the second compliance date extension was going through rulemaking in late 1995, §117.540 was not included in order to keep the section open for SB 200-mandated revisions. In spite of the additional time afforded to industry as a result of the second extension of the compliance date to May 31, 1999, the staff believes that retaining the phased NO<sub>x</sub> RACT mechanism in §117.540 is warranted because of the continued possibility of unforeseen and unavoidable delays in delivery, construction, and installation of control equipment to meet rule requirements.

The update to the phased NO<sub>x</sub> RACT section brings all references in §117.540 to the Chapter 117 final compliance date to May 31, 1999 and correspondingly adjusts all intermediate deadlines. In addition, a reference to §103.71 of this title (relating to Request for Action by the Commission) concerning appeal of the executive director's decision is deleted, since the entire set of Procedural Rules (Chapter 103 of this title) were repealed, effective July, 1994. These provisions now appear in proposed new Chapter 50 of this title (relating to Actions on Applications and Hearing Requests), with adoption planned in May, 1996. By the time the present rulemaking comes before the commission for adoption in late July, 1996, §117.540 can be updated with the appropriate Chapter 50 reference, if needed.

Regarding the second change of this amendment, the 1990 FCAA amendments require states to either adopt the FCFF program, or implement a program which demonstrates equivalent emission reductions to the federal program. The agency is required by SB 200 to adopt rules requiring transit, privately owned, and local government fleets in the state's ozone nonattainment areas to purchase vehicles certified to the federal clean-fuel vehicle standards. The FCAA also established a Mobile Emissions Reduction Credit (MERC) program as a program incentive, and included provisions allowing MERCs to be used to satisfy RACT requirements. Affected fleets which achieve reductions below the federal Low Emission Vehicle (LEV) standards, through any vehicle/fuel combination, may generate MERCs. The

MERCs can be used for program compliance, fleet to fleet trades, and fleet to stationary source trades.

Fleet to stationary source trading is the subject of this rulemaking, which authorizes use of clean-fuel vehicle MERCs to satisfy Chapter 117 NO<sub>x</sub> RACT requirements on an interim basis. In previous rulemaking effective June, 1994, the commission adopted new §117.540(c), allowing the use of MERCs from vehicle scrappage for interim compliance with Chapter 117, provided that the procedures of §117.570, Trading, are followed. Section 117.540(c) is amended by adding language clarifying that MERCs referenced in this section are created from vehicle scrappage, and renumbering as §117.540(b).

The current proposal, which adds language comparable to renumbered §117.540(b), is contained in new §117.540(c) and cross-references a new section in Chapter 114 of this title (relating to Control of Air Pollution from Motor Vehicles) being developed concurrently with this rulemaking. The new Chapter 114 section specifies procedures for quantifying, recording, and registering MERCs in the emissions bank. In contrast to vehicle scrappage MERCs, which have a life of three years, the lifetime of clean-fuel vehicle MERCs will be two years for MERCs generated before September 1, 2002, and for MERCs generated on or after that date, the lifetime will correspond to the estimated remaining useful vehicle life (5-10 years, depending on the vehicle weight classification). The trading procedures specified in §117.570 are to be followed for all MERC-to-NO<sub>x</sub> RACT trades.

Current §117.540(b), which is proposed for deletion, outlines procedures for the executive director's reevaluation of the practicability of achieving compliance with Chapter 117 by the original compliance date of May 31, 1995. This reevaluation was to be based on information submitted by companies in their initial control plans, as required by Chapter 117. This rule subsection was adopted in 1993 in response to the concern, that without more stack sampling, the overall scope of required reductions could have been underestimated to the extent that compliance in a two-year period would be generally impractical. The initial control plans submitted in April, 1994 reflecting additional sampling showed that the two-year period was generally practical, since only a small percentage of units would be required to retrofit with emission controls.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section as proposed is in effect, there are no significant fiscal implications anticipated for state and local governments as a result of administration or enforcement of the section. Economic costs to businesses as a result of this proposal are not readily quantifiable. Allowing for a case-by-case extension of the rule's final compliance date will result in savings for qualifying companies. In addition, the proposal provides additional flexibility in achieving rule compliance.

Mr. Minick has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be more efficient allocation of capital resources necessary to accomplish emission reductions in ozone nonattainment areas. There are no economic costs anticipated for any individual required to comply with the sections as proposed.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to update a rule section with references to the new final compliance date, to delete obsolete rule language, and to provide additional flexibility in rule compliance through the use of clean-fuel vehicle MERCs. The rule amendments will substantially advance this specific purpose by changing dates where appropriate, deleting obsolete language, and adding provisions for the use of clean-fuel vehicle MERCs. Promulgation and enforcement of these rule amendments will not affect private real property which is the subject of the rule because the only change is to provide additional rule flexibility.

A public hearing on this proposal will be held on June 11, 1996, at 10:00 a. m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex located at 12100 North IH-35, Park 35 Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 95158-117-AI. Comments must be received by 5:00 p.m. June 14, 1996. For further information, please contact Mike Magee, Air Policy and Regulations Division, (512) 239-1511.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.017.

*§117.540. Phased Reasonably Available Control Technology (RACT).*

(a) The owner or operator affected by the provisions of this chapter (relating to Control of Air Pollution from Nitrogen Compounds) who determines that compliance by May 31, **1999** [1995] is not practicable may submit a petition for phased RACT. The process for submitting a petition and receiving approval shall be based on the following:

(1) The petition shall be submitted by October 1, **1998** [1994], or as soon as possible after such date upon a demonstration by the owner or operator that the petition was not submitted by October 1, **1998** [1994] due to unforeseen circumstances.

(2) The owner or operator of the affected unit or units shall submit information in the petition to the Texas Natural Resource Conservation Commission (TNRCC) and a copy to the United States Environmental Protection Agency (EPA) Regional Office in Dallas which will demonstrate all of the following:

(A) compliance by May 31, **1999** [1995] is impracticable due to the unavailability of nitrogen oxides (NO<sub>x</sub>) abatement equipment, engineering services, or construction labor; system unreliability; manufacturing unreliability; equipment unreliability; or other technological and economic factors as the TNRCC determines are appropriate;

(B) (No change.)

(C) there is a commitment to implement the portion of the phased RACT petition that can be implemented by May 31, **1999** [1995]; and

(D) the final compliance date specified in the petition shall be as soon as practicable, but in no case later than August 31, **2000** [1996], except as approved by the executive director.

(3) Each petition for phased RACT shall contain the information required by at least one of the following criteria.

(A) If compliance by May 31, **1999** [1995] is impracticable due to the unavailability of <sub>x</sub> abatement equipment, engineering services, or construction labor, the following information shall be included in the petition for phased RACT:

(i) a list of the company names, addresses, and telephone numbers of vendors who are qualified to provide the services and equipment capable of meeting the applicable emission limitation under this chapter and who have been contacted to obtain the required services and equipment. A copy of the request for bids along with the dates of contact shall also be provided to show a

good-faith effort to obtain the required services and equipment necessary to meet the requirements of this chapter by May 31, **1999** [1995]; and

(ii) copies of responses from each of the vendors listed in clause (i) of this subparagraph showing that they cannot provide the necessary services and install the appropriate equipment in time for the unit to comply by May 31, **1999** [1995]. Such responses shall include the reasons why the services cannot be provided and why the equipment cannot be installed in a timely manner.

(iii) (No change.)

(B) If compliance by May 31, **1999** [1995] is impracticable due to system unreliability for sources in the utility industry, defined as the inability or threatened inability of a utility grid system to fulfill obligations to supply electric power, the following information shall be included in the petition for phased RACT:

(i) standard load forecasts, based on standard forecasting models available throughout the utility industry, applied to the period May 31, **1997** [1993]-May 30, **1999** [1995];

(ii) (No change.)

(iii) specific reasons why an outage for the purpose of installing <sup>x</sup> emission control equipment cannot be scheduled by May 31, **1999** [1995].

(C) If compliance by May 31, **1999** [1995] is impracticable due to manufacturing unreliability, defined as the inability or threatened inability of a source to fulfill contractual obligations to supply a product or products, the following information shall be included in the petition for phased RACT:

(i)-(ii) (No change.)

(iii) specific reasons why an outage for the purpose of installing <sup>x</sup> emission control equipment cannot be scheduled by May 31, **1999** [1995].

(D) If compliance by May 31, **1999** [1995] is impracticable due to equipment unreliability, defined as the reduced availability and operating reliability of a unit resulting from the operation of <sup>x</sup> control equipment on that unit, the following information shall be included in the petition for phased RACT:

(i)-(iv) (No change.)

(E) If compliance by May 31, **1999** [1995] is impracticable due to other technical factors, the petition for phased RACT shall contain such documentation as the executive director establishes is appropriate for such technical factors.

(F) If compliance by May 31, **1999** [1995] is unreasonable due to economic considerations, excluding the time value of money, the petition for phased RACT shall contain the following information showing comparisons of the cost of compliance by May 31, **1999** [1995] and the cost of compliance by the final compliance date specified in the petition:

(i) the costs of additional outages, if applicable, necessitated by compliance with the emission specifications of this chapter by May 31, **1999** [1995], as demonstrated by comparison to costs of actual historical and planned outages;

(ii) comparisons of the cost of obtaining the <sup>x</sup> abatement equipment, engineering services, or construction labor necessary to comply by May 31, **1999** [1995], and the cost of obtaining the <sup>x</sup> abatement equipment, engineering services, or construction labor by the final compliance date specified in the petition.

Copies of legally binding contracts, signed by an authorized official of the company, shall be submitted to document these costs. If the required <sup>x</sup> abatement equipment, engineering services, or construction labor will be provided by the owner or operator, as provided for in paragraph (4) of this subsection, certification by an authorized official of the company may be submitted in lieu of contracts to document these costs; or

(iii) (No change.)

(4) All petitions for phased RACT shall include copies of legally binding contracts with the primary vendors for each project, signed by an authorized official of the company, showing a detailed design or installation schedule for the required services or equipment to be provided by that vendor, with a completion date no later than August 31, **2000** [1996], except as approved by the executive director. Any commercially sensitive financial information or trade secrets should be excised from the contracts.

(5) (No change.)

(6) The executive director shall approve or deny the petition within 90 days of receiving an administratively complete phased RACT petition. The executive director shall approve a petition for phased RACT if the executive director determines that compliance is not practicable by May 31, **1999** [1995], because of either the unavailability of nitrogen oxides abatement equipment, engineering services, or construction labor; system unreliability; manufacturing unreliability; equipment unreliability; or other technological and economic factors as the **executive director** [TNRCC] determines are appropriate.

(7) Any person affected by the executive director's decision to deny a petition for phased RACT or to deny a revision to an approved phased RACT petition may appeal the decision to the commission within 30 days after the date of the decision. Such appeal is to be taken by written notification to the executive director. [Section 103.71 of this title (relating to Request for Action by the Commission) should be consulted for the method of requesting Commission action on the appeal.] Approved petitions for phased RACT may be revised by the executive director upon a showing of just cause by the applicant.

(8)-(9) (No change.)

[(b) The executive director shall initiate a reevaluation of the final compliance dates specified in this undesignated head (relating to Administrative Provisions) one year after the adoption of this chapter. The executive director shall evaluate the practicability of all sources complying with §117.105 (relating to Emission Specifications), §117.107 (relating to Alternative System-Wide Emission Specifications), §117.205 (relating to Emission Specifications), §117.207 (relating to Alternative Plant-Wide Emission Specifications), §117.305 (relating to Emission Specifications), §117.405 (relating to Emission Specifications), and §117.223 (relating to Source Cap) of this title by May 31, 1995. The executive director shall base the evaluation on the information contained in the control plans required by §§117.109, 117.209, 117.309, and 117.409 of this title (relating to Initial Control Plan Procedures). In evaluating the practicability of compliance by May 31, 1995, the executive director shall take into consideration the availability of <sup>x</sup> abatement equipment, engineering services, or construction labor; system unreliability; manufacturing unreliability; equipment unreliability; or other technological and economic factors as the TNRCC determines are appropriate. Within 15 months after adoption of this chapter, the executive director shall publish notice in the *Texas Register* of the intent to either retain or extend by rulemaking the final compliance dates of this undesignated head.]

(b)[(c)] The executive director may approve the use of a mobile source emission reduction credit (MERC), **created from vehicle scrappage**, to achieve <sup>x</sup> emissions reductions equivalent to those required by this chapter, on an interim basis from May 31,

1999 [1995] to the date of final compliance, for a period not to exceed 36 months. Any plan involving the use of a MERC may be approved if the executive director determines that it conforms to the provisions of §117.570 of this title (relating to Trading) and §114.29 of this title (relating to Accelerated Vehicle Retirement Program). Executive director approval does not necessarily constitute satisfaction of all federal requirements, nor eliminate the need for approval by EPA.

(c) The executive director may approve the use of a MERC, created from clean-fuel vehicles, to achieve <sup>x</sup> emissions reductions equivalent to those required by this chapter, on an interim basis from May 31, 1999 to the date of final compliance, for a period not to exceed that specified in §114.39 of this title (relating to MERC Program). Any plan involving the use of a MERC may be approved if the executive director determines that it conforms to the provisions of §117.570 of this title (relating to Trading) and §114.39 of this title. Executive director approval does not necessarily constitute satisfaction of all federal requirements, nor eliminate the need for approval by EPA.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606098 Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation Commission

Proposed date of adoption: July 24, 1996

For further information, please call: (512) 239-4808

## TITLE 34. PUBLIC FINANCE

### Part VI. Texas Municipal Retirement System

#### Chapter 121. Practice and Procedure Regarding Claims

##### • 34 TAC §121.7

The Texas Municipal Retirement System, proposes an amendment to §121.7, concerning submission of documents reasonably related to establishment of a claimed right to benefits. The amendment will clarify the required documentation and set guidelines for the timely receipt of these documents in the offices of the retirement system.

Gary W. Anderson, director, Texas Municipal Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule.

Mr. Anderson also has determined that for each year of the first five years the rule is in effect the public benefit anticipated would be procedures for making timely applications for certain benefits. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Gary W. Anderson, Director, Texas Municipal Retirement System, P.O. Box 149153, Austin, Texas 78714-9153.

The amendment is proposed under the Government Code, §855.102, which provides the board of trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for effective administration of the System.

The Government Code, §855.102, is affected by the amendment.

*§121.7. Supporting Documents to be Submitted.* The director is authorized to require submission of documents reasonably related to establishment of a claimed right to benefits. These documents include but are not limited to birth certificates; marriage licenses; divorce decrees; letters of guardianship; letters testamentary or let-

ters of administration; death certificates; relevant court orders; sworn statements of witnesses and attending physicians; autopsy reports; sworn statements of the claimant or of others having personal knowledge of relevant facts. **Except upon good cause being shown, failure to submit all required documents within four months of the date specified by the member as his or her effective retirement date will invalidate the application for retirement (service or disability) for all purposes. Thereafter, a new application must be submitted and a new retirement date chosen in accordance with §121.6 of this title (relating to Time Filing of Retirement Applications)** [An applicant shall have a reasonable time from date of written request to furnish supporting documents required by the director.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606123 Gary W. Anderson  
Executive Director  
Texas Municipal Retirement System

Earliest date of adoption: June 15, 1996

For further information, please call: (512) 476-7577

## Chapter 123. Calculation or Types of Benefits

### • 34 TAC §123.5

The Texas Municipal Retirement System, proposes an amendment to §123.5, concerning spousal consent on any form filed with the system making application for a retirement annuity. The amendment specifies the manner in which spousal consent is obtained on applications for certain retirement annuity payments.

Gary W. Anderson, director, Texas Municipal Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule.

Mr. Anderson also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of clarifying the rules will be clarification of the spousal rights in certain retirement annuities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Gary W. Anderson, Director, Texas Municipal Retirement System, P.O. Box 149153, Austin, Texas 78714-9153.

The amendment is proposed under the Government Code, §855.102, which provides the board of trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for effective administration of the System.

The Government Code, §855.102, is affected by the amendment.

#### *§123.5. Requirement of Spousal Consent.*

(a) The selection by any member of the system on any form filed with the system of a retirement annuity in the form of an annuity other than a joint-and-survivor annuity that pays benefits to the member's spouse on the death of the member is not effective unless the member's spouse consents to the selection.

(b) The consent of a spouse required by subsection (a) of this section must be in writing and either witnessed by an officer or employee of the system or acknowledged by a notary public.

(c) The consent required by subsection (a) of this section is not required if it is established to the satisfaction of the system that:

- (1) there is no spouse;
- (2) the spouse cannot be located;

(3) the spouse has been judicially declared incompetent in which case the consent may be given by the guardian or other ad litem;

(4) **a duly licensed physician has determined that the spouse is not mentally capable of managing his or her own affairs, in which case the consent may be given by the member provided the member would not be disqualified to serve as guardian of the incapacitated spouse and the director is satisfied that a guardianship of the estate is not necessary;**

(5)[4] the spouse and the member have been married for less than one year as of the date the annuity first becomes payable; or

(6)[5] a former spouse is entitled to receive a portion of the member's retirement benefit under a qualified domestic relations order.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606129 Gary W. Anderson  
Executive Director  
Texas Municipal Retirement System

Earliest date of adoption: June 15, 1996

For further information, please call: (512) 476-7577



## Chapter 129. Qualified Domestic Relations Orders

### • 34 TAC §§129.3, 129.6, 129.7, 129.9, 129.10

The Texas Municipal Retirement System, proposes an amendment to §§129.3, 129.6, 129.7, 129.9, and 129.10. These amendments change certain statutory references as a result of the codification, transfer and renumbering of the Texas Civil Statutes, Title 110B as well as define and clarify documentation required by the system to comply with qualified domestic relations orders.

Gary W. Anderson, director, Texas Municipal Retirement System, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the rules.

Mr. Anderson also has determined that for each year of the first five years the rules are in effect the public benefit anticipated will be clarification of certain statutory references and clarification of procedures related to certain QDRO. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Gary W. Anderson, Director, Texas Municipal Retirement System, P.O. Box 149153, Austin, Texas 78714-9153.

The amendments are proposed under the Government Code, §855.102, which provides the board of trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for effective administration of the System.

The Government Code, §855.102 is affected by the amendments.

*§129.3. Notice Regarding Receipt of Order.* Upon receiving a domestic relations order, the domestic relations liaison shall promptly send a notice to those persons listed in paragraphs (1) and (2) of this section, stating that the system has received the domestic relations order and that it will be acted upon by the system in accordance with the procedures set forth in this chapter [a copy of which procedures will be enclosed with the notice]. The persons who are to receive the notice are:

(1)-(2) (No change.)

### *§129.6. Order Should Divide All Benefits.*

(a) Under the Act, a participant's accumulated contributions (with interest as allowed thereon under the Act) may become payable to a participant upon terminating **municipal** [subdivision] employment and membership in the system prior to retirement, as set forth in the Act, **§852.103** [§62.103], or may become payable to the participant's designee or estate under the Act, **§854.501** [§64.501], in the event of the participant's death prior to retirement. A domestic relations order regarding a participant who has not yet retired should clearly state the basis upon which any portion of such sums should be payable to an alternate payee. In the event that a domestic relations order does not clearly state how interest allowed on the contributions is to be divided, it will be divided (upon any payment of accumulated contributions under either the Act, **§852.103** [§62.103] or **§854.501** [§64.501] pro rata on the basis that the amount awarded to the alternate payee bears to the total accumulated contributions.

(b) Under the Act, a service retirement benefit or a disability retirement benefit may become payable to the participant (and, upon the participant's death, to a designee) as set forth in the Act, **§854.101-854.105** [§64.101-64.105] and **§854.301-854.305** [§64.301-64.304]. A domestic relations order regarding a participant should clearly state the basis upon which any portion of such retirement benefit should be payable to an alternate payee.

(c) A supplemental death benefit may become payable under the Act, **§854.603** [§64.603] or **§854.604** [§64.604], upon the death of a participant who was or had been employed by certain of the municipalities participating in the system. That benefit is not the property of a participant, but rather is a benefit that is paid by the system as a result of the death of a participant. If any portion of such benefit becomes payable to an alternate payee under the express wording of a qualified domestic relations order, it will be so paid upon the death of the participant; however, if the domestic relations order does not specifically provide that some portion of that benefit is to be paid to an alternate payee, then no portion of the supplemental death benefit shall be paid otherwise than as set forth in the Act, **§854.605** [64.605].

*§129.7. Conditional Approval of Order.* If, upon receipt of a domestic relations order, the domestic relations liaison is of the opinion that it complies in all ways with the requirements for a qualified domestic relations order hereunder, the domestic relations liaison shall so state in the notice to be sent under §129.3 of this title (relating to Notice Regarding Receipt of Order). In that event, the notice shall also state that the system will thereafter pay the sums payable under the order in the manner set forth in the order, unless any of the parties notifies the system in writing, within **two weeks (and such additional time as may be allowed by the System upon good cause being shown)** [a fixed number of days] from the date of **mailing** of the notice, that they are contesting the order.

### *§129.9. Order Appearing Not to Qualify.*

(a) If, upon receipt of a domestic relations order, the domestic relations liaison is of the opinion that the order does not comply in all ways with the requirements for a qualified domestic relations order hereunder, the domestic relations liaison shall **so state** (in the notice to be sent under §129.3 of this title (relating to Notice Regarding Receipt of Order)) **and notify the parties that unless they commence action within 90 days to bring** [request the assistance of the parties in bringing] the order into compliance with the provisions of this chapter relating to qualified domestic relations orders, **the order will be determined not to be a qualified domestic relations order. If 60 days have elapsed and neither party has**



submitted documentation to the system reflecting that action has been commenced to bring the order into compliance, the domestic relations liaison will remind each party by first class mail that unless documentation has been submitted to the system showing that action has been commenced before the expiration of the 90 day period the order will be determined not to be a qualified domestic relations order and the system will pay to the participant any sums that have been withheld up to that date, and shall thereafter make payment of benefits as if no order had been received by the system.

(b) If the domestic relations liaison has made an initial determination under this section that the order does not appear to qualify, the system nonetheless may (but shall not be required to) pay to the participant all or any portion of any benefits to which the participant appears entitled under the order. Any benefits not paid under this subsection shall be retained by the system until they are paid under one of the remaining subsections of this section.

(c) In the event that, in the opinion of the domestic relations liaison, the order is subsequently brought into compliance with the requirements of this chapter for qualified domestic relations orders, the domestic relations liaison shall so notify the parties in writing, and the system will thereafter pay the sums payable under the order in the manner set forth in the order, unless such order is subsequently set aside or modified by a court of competent jurisdiction.

(d) In the event that **neither party has timely commenced action in accordance with subsection (a) of this section** and the domestic relations liaison determines that the order [does not appear to comply and] has not been brought into compliance with the requirements of this chapter for qualified domestic relations orders, **the order is not a qualified domestic relations order. The [the] domestic relations liaison shall so notify the parties in writing, and the system will pay to the participant any sums that have been withheld hereunder after [none of the benefits that have been withheld shall be paid until the first to occur of:]**

[(1) the system's receipt of a certified copy of a subsequent order that the domestic relations liaison determines qualifies under this chapter, or]

[(2)] the expiration of **six [18] months from the notice under §129.3 of this title (relating to Notice Regarding Receipt of Order) was mailed (provided that upon good cause being shown prior to the expiration of such six-month period, the time for bringing the order into compliance may be extended for up to two additional six-month periods), and shall thereafter make payment of benefits as if no order had been received [domestic relations order is received].**

(e)-(g) (No change.)

#### *§129.10. Procedures for Determination-Contested Order.*

(a) (No change.)

(b) For a period of 90 days following the **date of mailing of the conditional approval under §129.7 of this title (relating to Conditional Approval of Order) if a notice of contest has been timely received [system's receipt of notice of a contest]**, the system will not make any payment to [either the participant or] the alternate payee under the contested order unless the contest is sooner withdrawn in writing by the party who gave written notice of contest. **The system may (but is not required to) pay to the participant all or any portion of any benefits to which the participant appears entitled under the order. Any benefits not paid under this subsection shall be retained by the system until they are paid under one of the subsections of this section.**

(c) Any party desiring to contest the order may, within that 90-day period, apply to the courts for a clarification order, and, in

the event that the system receives (within such 90-day period) notice of such a motion being filed, the system will continue to withhold payment of benefits until the first to occur of:

(1) the system's receipt of a certified copy of a subsequent order that the domestic relations liaison determines qualifies under this chapter; or

(2) the expiration of **six [18] months from the date of mailing of the notice of conditional approval under §129.7 of this title (relating to Conditional Approval of Order) provided that for good cause shown prior to the expiration of the six-month period, the time for withholding payment of benefits may be extended for up to two additional six-month periods.** [the domestic relations order was received by the system:]

(d) If, within the **six-month period set forth in §129.10(c)(2) (including any extensions for good cause)** [18 months after the date the system received the original domestic relations order], the system receives a subsequent order under §129.11 of this title (relating to Procedure for Obtaining Formal Hearing), the system will pay all benefits (including any that have been withheld under this chapter) pursuant to that subsequent order, unless the domestic relations liaison notifies the parties in writing that the order does not qualify under this chapter. In making a determination hereunder, the domestic relations liaison may (but shall not be required to) rely on the determination of the court in a clarification order meeting the requirements of §129.4 of this title (relating to Requirements for Qualified Domestic Relations Orders). If the domestic relations liaison notifies the parties in writing that the subsequent order does not qualify, action on the order thereafter will be in accordance with the provisions of §129.9 of this title (relating to Order Appearing Not to Qualify).

(e)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606130 Gary W. Anderson  
Executive Director  
Texas Municipal Retirement System

Earliest possible date of adoption: June 15, 1996

For further information, please call: (512) 476-7577

### ◆ ◆ ◆ • 34 TAC §129.13, §129.14

The Texas Municipal Retirement System, proposes new §129.13 and §129.14, concerning requirements for a qualified domestic relations order. These new sections are being proposed to provide a form that has been pre-approved by the retirement system as meeting the requirements of this title for a qualified order. A qualified domestic relations order in substantially the prescribed form incorporates by reference the definitions set forth in these sections and the provisions set forth in §129.14 of this title (relating to Provisions Incorporated by Reference).

Gary W. Anderson, director, Texas Municipal Retirement System, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the rule.

Mr. Anderson also has determined that for each year of the first five years the rule is in effect the public benefit anticipated will to simplify and clarify the process of preparing and filing a QDRO with the system. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments may be submitted to Gary W. Anderson, Director, Texas Municipal Retirement System, P.O. Box 149153, Austin, Texas 78714-9153.

The new sections are proposed under the Government Code, §855.102, which provides the board of trustees of the Texas Municipal

Retirement System with the authority to adopt rules necessary or desirable for effective administration of the System.

The Government Code, §855.102, is affected by the new sections.

*§129.13. Form of Qualified Domestic Relations Order.*

(a) The following form has been pre-approved by the retirement system as meeting the requirements of this title for a qualified order. A qualified domestic relations order in substantially the following form incorporates by reference the definitions set forth in this section and the provisions set forth in §129.14 of this title (relating to Provisions Incorporated by Reference).

Figure 1. 34 TAC 129.13(a)

(b) It is the responsibility of the parties to insert the correct information in the pre-approved form at those places marked by parentheses enclosing capital letters, and to provide the system with a certified copy of the order after it has been entered.

(c) The term "community property ratio" as used in the pre-approved form shall mean the ratio that contributions and interest deposited to Participant's individual account with the retirement system between the dates shown bears to Participant's total contributions and interest at time of retirement or withdrawal of accumulated contributions if "accumulated contributions" is shown in the order to be the basis for division.

(d) The term "community property ratio" as used in the pre-approved form shall mean the ratio that Participant's credited service between the dates shown bears to Participant's total credited service at time of retirement or withdrawal of accumulated contributions if "total credited service" is shown in the order to be the basis for division.

(e) The order shall not be considered qualified unless it clearly reflects which of the ratios described above is intended to be used in computing the division of benefits.

(f) The fraction inserted in paragraph 4 of the pre-approved form customarily would be one-half; however, nothing in this section shall preclude the parties inserting any fraction that is intended to control the division of the benefit.

(g) The dates inserted in paragraph 4 of the pre-approved form customarily would be the dates the marriage began and ended; however, nothing in this section shall preclude the parties inserting any dates that are intended to control the division of the benefit.

*§129.14. Provisions Incorporated by Reference.* An order on the form set forth in §129.13 of this title (relating to Form of Qualified Domestic Relations Order) expressly incorporates all of the following by reference:

(1) The order shall not be interpreted in any way to require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.

(2) The order shall not be interpreted in any way to require the Plan to provide increased benefits determined on the basis of actuarial value.

(3) The order shall not be interpreted in any way to require the Plan to pay any benefits to an/any Alternate Payee named in the order which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) The order shall not be interpreted in any way to require the payment of benefits to Alternate Payee before the retirement of Participant, the distribution of a withdrawal of contributions to Participant as authorized by the statutes governing the Plan, or other distribution to Participant required by law.

(5) If the Plan provides for a reduced benefit upon "early retirement", the order shall be interpreted to require that, in the event

of Participant's retirement before normal retirement age, the benefits payable to Alternate Payee shall be reduced in a proportionate amount.

(6) The order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of Participant's death, or to require the selection of a particular benefit payment plan or option.

(7) In the event that, after the date of the order, the amount of any benefit otherwise payable to Participant is increased as a result of amendments to the law governing the Plan, Alternate Payee shall receive a proportionate part of such increase unless such an order would disqualify the order under the rules the Plan has adopted with regard to qualified domestic relations orders.

(8) In the event that, after the date of the order, the amount of any benefit otherwise payable to Participant is reduced by law, the portion of benefits payable to Alternate Payee shall be reduced in a proportionate amount.

(9) If, as a result of Participant's death after the date of the order, a payment is made by the Plan to Participant's estate, surviving spouse, or designated beneficiaries, which payment does not relate in any way to Participant's length of employment or accumulated contributions with the Plan, but rather is purely a death benefit payable as a result of employment or retired status at the time of death, no portion of such payment is community property, and Alternate Payee shall have no interest in such death benefit.

(10) If the board of trustees of the Plan has by rule provided that, in lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the Plan may pay the alternate payee an amount that is the actuarial equivalent of

(A) an annuity payable in equal monthly installments for the life of the alternate payee, or

(B) a lump sum, then and in that event the Plan is authorized to make such a payment under the order.

(11) All payments to Alternate Payee under the order shall terminate upon Alternate Payee's death or at such earlier date as may be required as a result of the retirement option selected by Participant.

(12) All benefits payable under the Plan, other than those payable under paragraph 4 of the order to Alternate Payee, shall be payable to Participant in such manner and form as Participant may elect in his/her sole and undivided discretion, subject only to Plan requirements.

(13) Alternate Payee is ORDERED to report any retirement payments received on any applicable income tax return, and to promptly notify the Plan of any changes in Alternate Payee's mailing address. The Plan is authorized to issue a Form 1099R on any direct payment made to Alternate Payee.

(14) Participant is designated a constructive trustee for receiving any retirement benefits under the Plan that are due to Alternate Payee but paid to Participant. Participant is ORDERED to pay the benefit defined in this paragraph directly to Alternate Payee within three days after receipt by Participant. All payments made directly to Alternate Payee by the Plan shall be a credit against this order.

(15) The Court retains jurisdiction to amend the order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 3, 1996.

Earliest date of adoption: June 15, 1996

For further information, please call: (512) 476-7577

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 11. Design

##### Access Driveways to State Highways

###### • 43 TAC §§11.50-11.53

The Texas Department of Transportation proposes new §11.50 and amendments to §§11.51-11.53 concerning Access Driveway Facilities to State Highways. Due to constraints on department funding and personnel and to provide a more uniform statewide policy on driveways, the new section and amendments provide that the department will no longer assist in the installation or maintenance of, or provide materials for, private driveways.

New §11.50 adds definitions to clarify the meaning of the various types of driveways.

Amended §11.51 adds subsection (e) to address drainage of roadside ditches.

Amended §11.52 deletes the provision for the department to assist in the installation and maintenance of commercial and private driveways.

Amended §11.53 adds subsection (c) to address safety and drainage problems related to driveways.

Walter W. Chambers, P.E., Director of Construction and Maintenance Division, has determined that for each year of the first five years this change is in effect the state will save approximately 75% of its yearly expenditures of driveway installation and maintenance costs or approximately \$9 million annually.

Mr. Chambers also has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Chambers also has determined that for each year of the first five years the new and amended sections are in effect, the public benefits anticipated as a result of enforcing the sections will be better maintenance of the state highway system due to funds and manpower not being used for installation and maintenance of private drives. Individual owners of property desiring to install an access driveway to a highway under the jurisdiction of the Texas Department of Transportation will have to pay for materials, installation, and maintenance. Such costs will vary depending upon the location and nature of the driveway.

Pursuant to the Administrative Procedures Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed revisions. The public hearing will be held at 9:00 a.m. on June 4, 1996 in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with

disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lungren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed amendments may be submitted to Walter W. Chambers, Director of Construction and Maintenance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on June 17, 1996.

The new section and amendments are proposed under Transportation Code, §201.101, which provides the Texas Department of Transportation with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation.

No statutes, articles, or codes are affected by the proposed amendments and new section.

*§11.50. Definitions.* The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Commercial driveway—An entrance to, or exit from, any commercial, business, or similar type establishment.

Private driveway—An entrance to, or exit from, a residential dwelling, farm, or ranch for the exclusive use and benefit of the grantee.

Public access driveway—All approaches from county or city maintained roads and streets, and approaches to schools, cemeteries, and other public places or buildings of a like character.

###### *§11.51. Access Driveway Facilities.*

(a) Access facilities shall be for the bona fide purpose of securing access to abutting property and shall not be for the purpose of parking or servicing on highway right-of-way.

(b) Location and design of access driveways shall be selected to provide maximum safety for highway traffic and for users of the driveway facility.

(c) Principles of traffic channelization shall be applied in the design of entrance and exit driveways with their width limited to that necessary for adequate access.

(d) Safety zones shall be established between entrance and exit drives, at intersections and at other places when needed to preserve lateral sight distance, channelization of traffic flow, and for safety of pedestrians.

**(e) Drainage in highway side ditches shall not be altered or impeded. When drainage structures are required, size of opening and other design features shall be approved by the department.**

###### *§11.52. Access Driveway Facilities Outside the Corporate Limits of Municipalities.*

(a) For commercial and private driveways, the cost of materials, installation and maintenance shall be the responsibility of the grantee.

(b) For public [non-commercial] driveways, the cost of materials and [material,] installation[, and maintenance] shall be the responsibility of the grantee. The department shall maintain all portions of public access driveways which lie within the state highway right of way and which are the maintenance responsibility of the department [may assist as the workload permits].

*§11.53. Applicability.*

(a) These departmental rules shall apply to all future access driveway facilities which are constructed on highways under the jurisdiction of the **Texas** [State] Department of [Highways and Public] Transportation. They shall also apply to existing driveways which may be destroyed or removed and then rebuilt.

(b) (No change.)

(c) **The department may undertake actions deemed necessary to correct drainage or safety problems related to existing or new driveway facilities.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606149      Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation

Earliest possible date of adoption: June 14, 1996

For further information, please call: (512) 463-8630

◆            ◆            ◆

# WITHDRAWN RULES

---

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

---

## TITLE 1. ADMINISTRATION

### Part XII. Advisory Commission on State Emergency Communications

#### Chapter 251. Regional Plans-Standards

##### • 1 TAC §251.8

The Advisory Commission on State Emergency Communications has withdrawn from consideration for permanent adoption the proposed new section §251.8, which appeared in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10459).

Issued in Austin, Texas, on May 1, 1996.

TRD-9606077      Jim D. Goerke  
Interim Executive Director  
Advisory Commission on State Emergency  
Communications

Effective date: May 2, 1996

For further information, please call: (512) 305-6911

◆      ◆      ◆

# ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the **Texas Register**. The section becomes effective 20 days after the agency files the correct document with the **Texas Register**, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 19. EDUCATION

### Part I. Texas Higher Education Coordinating Board

#### Chapter 21. Student Services

##### Subchapter CC. Early High School Graduation Scholarship Program

###### • 19 TAC §21.953, §21.956

The Texas Higher Education Coordinating Board adopts amendments to §21.953 and §21.956, concerning Early High School Graduation Scholarship Program without changes to the proposed text as published in the March 22, 1996, issue of the *Texas Register* (21 TexReg 2355).

These and a number of other amendments were approved by the Board at its October meeting, but the staff failed to include these amendments in the filing sent to the *Texas Register*. The mistake was discovered and was corrected by re-proposing the amendments and the amendments are now being adopted. The amendments are to implement provisions of House Bill 1479 regarding the Early High School Graduation Scholarship Program. The rules will provide \$1,000 state scholarships to students graduating high school in no more than 36 months.

No comments were received regarding adoption of the proposed amendments.

The amendments are adopted under House Bill 1479, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Early High School Graduation Scholarship Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 30, 1996.

TRD-9606042      James McWhorter  
Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board

Effective date: May 23, 1996

Proposal publication date: March 22, 1996

For further information, please call: (512) 483-6160

## TITLE 22. EXAMINING BOARDS

### Part XXVIII. Executive Council of Physical Therapy and Occupational Therapy Examiners

#### Chapter 651. Fees

###### • 22 TAC §651.1

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amended §651.1, concerning Occupational Therapy

Board Fees, without changes to the proposed text as published in the February 16, 1996 issue of the *Texas Register* (21 TexReg 1236), and corrected in the March 22, 1996 issue of the *Texas Register* (21 TexReg 2433).

This rule is being amended to change the fees established by the Executive Council as requested by the Occupational Therapy Board.

The amendment establishes set fees for licensure and for reinstatement of a suspended or revoked license by the Texas Board of Occupational Therapy Examiners.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512e-1, which provide the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 1, 1996.

TRD-9606029      John P. Maline  
Executive Director  
Executive Council of Physical Therapy and  
Occupational Therapy Examiners

Effective date: May 22, 1996

Proposal publication date: February 16, 1996

For further information, please call: (512) 305-6900

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 29. Purchased Health Services

##### Subchapter L. General Administration

###### • 25 TAC §29.1129

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits adopted new §29.1129, concerning the accreditation of mammography facilities and providers, with changes to the proposed text as published in the February 27, 1996, issue of the *Texas Register* (21 TexReg 1485).

Specifically, the new section defines the conditions for participation in the Texas Medical Assistance (Medicaid) Program for facilities and physicians providing screening and diagnostic mammography services. The providers of these services must meet the registration and accreditation standards of the department's Bureau of Radiation Control and Compliance, the recognized accreditation agency for the State of Texas, in accordance with the Mammography Quality Standards Act of 1992, Public Law 102-539 and the federal regulations found at 21 Code of Federal Regulations, Part 900, Subpart B. This new section will result in a higher level of accountability for medically necessary diagnostic services.

The following changes were made to the rule based on comments from department staff:

The word "Quality" was inserted in the rule title so that it reads "... Provider Compliance with the Mammography Quality Standards Act of 1992;" the word had been omitted.

In the first sentence of the rule, the word "Medicaid" had been omitted and with its insertion the sentence reads, "Providers seeking reimbursement from the Texas Medical Assistance (Medicaid) Program...."

The new section is adopted under the Human Resources Code, §32.021 and the Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program. The section is submitted by the Texas Department of Health under its arrangement with Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

*§29.1129. Provider Compliance with the Mammography Quality Standards Act of 1992.* Providers seeking reimbursement from the Texas Medical Assistance (Medicaid) Program for covered mammography screening and diagnostic services, must meet the registration and accreditation requirements of the department's Bureau of Radiation Control and Compliance, the recognized accrediting body for the state under the provisions of the Mammography Quality Standards Act of 1992, Public Law 102-539.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 1, 1996.

TRD-9606032 Susan K. Steeg  
General Counsel  
Office of General Counsel  
Texas Department of Health

Effective date: June 10, 1996

Proposal publication date: February 27, 1996

For further information, please call: (512) 458-7236

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 1. General Administration

##### Subchapter A. Rules of Practice and Procedure

###### • 28 TAC §1.88, §1.89

The Commissioner of Insurance adopts repeal of §1.88 and §1.89, concerning entry of appearance, and failure to appear at a hearing on a contested case, without changes to the proposed repeal of such sections published in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2001). Simultaneous to this adopted repeal, the Commissioner is adopting new §1.88 and §1.89, relating to the filing of a written response to the notice of hearing in a contested case, and to default provisions and remedies in the event of default, respectively; and amended §1.90, concerning the rules of practice and procedure for contested cases before the State Office of Administrative Hearings (SOAH) and the Commissioner of Insurance. Notice of adoption of the new sections and amendments to existing sections is published elsewhere in this issue of the *Texas Register*.

Repeal of the sections is necessary because their provisions relate to essentially the same subject matter and regulatory procedural framework as proposed new §1.88 and §1.89, concerning the filing of a written response to the notice of a hearing in a contested case, and to default provisions and remedies in the event of default.

Repeal of the sections permit them to be replaced with new sections that reorganize and streamline the disposition of certain contested matters, resulting in greater time efficiency and cost effectiveness than the repealed sections. The replacement sections permit the elimination of unnecessary administrative expense for both the department and

SOAH, so that resources may be shifted to necessary and more essential functions, by providing that in certain circumstances informal disposition by default authorized by the Insurance Code, Article 1.10, may be directly pursued by department staff.

No comments were received regarding adoption of the repeals.

The repeal is adopted pursuant to the Insurance Code, Articles 1.10 and 1.03A, and the Government Code, §2001.056 and §2001.004. Article 1.10, §7(d) provides that the commissioner may dispose of items addressed in §7 by consent order, agreed settlement, stipulations or default. Article 1.03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions by the department. The Government Code, §2001.056 provides that unless precluded by law, an informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default. The Government Code, §2001.004 authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribe the procedure for adoption of rules by a state administrative agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606091 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Effective date: May 23, 1996

Proposal publication date: March 12, 1996

For further information, please call: (512) 463-6327

###### • 28 TAC §§1.88, 1.89, 1.90

The Commissioner of Insurance adopts new §1.88 and §1.89, relating to the filing of a written response to the notice of hearing in a contested case, and to default provisions and remedies in the event of default, respectively; and amendments to §1.90, concerning the rules of practice and procedure for contested cases before the State Office of Administrative Hearings (SOAH) and the Commissioner of Insurance, without changes to new sections and amendments to existing sections as published in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2121). Simultaneous to this adoption of new §1.88 and §1.89, and amended §1.90, the Commissioner is adopting the repeal of existing §1.88 and §1.89. Notice of adoption of that repeal is published elsewhere in this issue of the *Texas Register*.

Provisions addressing the filing of a written response to the notice of hearing and sanctions for failure to file a written response or to appear at hearing are necessary and essential for the orderly and efficient disposition of matters before the Commissioner. The new sections will permit the elimination of unnecessary administrative expense for both the department and SOAH, so that resources may be shifted to necessary and more essential functions.

New §1.88 provides a requirement for filing a written response to the notice of hearing in contested cases, as well as procedural details necessary to comply with the requirement. It provides a definition for contested case, addresses notice provisions, sets out in detail a required disclosure to the respondent regarding the necessity to provide a written response and the consequences for failure to provide such response, as well as setting out that certain remedies are available to the department staff in the event a written response is not timely filed. New §1.89 sets out provisions defining default and the remedies available in the event of default, including informal disposition by default. It also defines "informal disposition by default," and provides a procedure by which a respondent may set aside a default order and reopen the contested case. Amended §1.90 contains conforming changes to the memorandum of understanding between the department and the State Office of Administrative Hearings necessarily resulting from new §1.88 and §1.89.

No comments were received regarding adoption of the new sections and the amendment.

The new sections and the amendment are adopted pursuant to the Insurance Code, Articles 1.10 and 1.03A, and the Government Code, §§2001.056 and §2001.004. Article 1.10, §7(d) provides that the commissioner may dispose of items addressed in §7 by consent order, agreed settlement, stipulations or default. Article 1.03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions by the department. The Government Code, §2001.056 provides that unless precluded by law, an informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default. The Government Code, §2001.004 authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribe the procedure for adoption of rules by a state administrative agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606090      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Effective date: May 23, 1996

Proposed publication date: March 19, 1996

For further information, please call: (512) 463-6327

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 261. General Provisions

##### Subchapter C. Expiration

###### • 30 TAC §261.30

The commission adopts the repeal of §261.30, concerning procedural rules, without changes to the proposed text as published in the February 20, 1996, issue of the *Texas Register* (21 TexReg 1367).

The effect of this action is to continue the existing procedural rules in effect until the commission acts on the proposed new rules.

This adoption is part of the second phase (Phase II) of an ongoing project to reorganize, clarify, and consolidate the procedural rules of the commission. The first phase of the project (Phase I) was intended to implement recent legislation and was completed in the summer of 1995. Phase I made limited substantive changes to the commission's rules and began limited reorganization. Phase II is a more ambitious attempt to reorganize and consolidate the commission's procedural rules, and to eliminate conflicting procedural requirements based solely on media or type of hearing. By consolidating these rules, the commission seeks to cut back on the duplication of requirements and definitions that might create unwarranted non-statutory differences in the treatment of persons working with the commission. As part of this ongoing project, the commission is continuing to examine program and media specific rules for inconsistency with the general rules of the agency. It is anticipated that any further consolidation will be proposed as amendments to specific programs or chapters and not as a further major revision to these procedural rules.

Proposed numbering changes attempt to impose a more logical organization upon the most widely applicable rules of the commission by taking advantage of newly available chapters in Title 30. Chapters 1-99 will be reserved for the procedural rules and broadly applicable substantive rules of the commission. By locating generally applicable rules at the beginning of Title 30, commission rules should be organized in a more logical and user-friendly format. The proposed new format consists of the following reservation of chapters: Chapters 1-10-general rules of the commission; Chapters 11-20- miscellaneous provisions not specific to any media; Chapters 20-29-rulemaking; Chapters 30-49- application procedures; Chapters 50-69-processing of applications; Chapter 70-79-enforcement; Chapter 80-89-hearings-contested/other. The current proposal conforms to this new format.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606175      Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation Commission

Effective date: May 27, 1996

Proposal publication date: February 20, 1996

For further information, please call: (512) 239-1966

## Chapter 263. Final Approval by Executive Director, Evaluation of Request for Contested Case Hearing

### Subchapter C. Expiration

#### • 30 TAC §263.40

The commission adopts the repeal of §263.40, concerning procedural rules, without changes to the proposed text as published in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2161).

The effect of this action is to continue the existing procedural rules in effect until the commission acts on the proposed new rules.

This adoption is part of the second phase (Phase II) of an ongoing project to reorganize, clarify, and consolidate the procedural rules of the commission. The first phase of the project (Phase I) was intended to implement recent legislation and was completed in the summer of 1995. Phase I made limited substantive changes to the commission's rules and began limited reorganization. Phase II is a more ambitious attempt to reorganize and consolidate the commission's procedural rules, and to eliminate conflicting procedural requirements based solely on media or type of hearing. By consolidating these rules, the commission seeks to cut back on the duplication of requirements and definitions that might create unwarranted non-statutory differences in the treatment of persons working with the commission. As part of this ongoing project, the commission is continuing to examine program and media specific rules for inconsistency with the general rules of the agency. It is anticipated that any further consolidation will be proposed as amendments to specific programs or chapters and not as a further major revision to these procedural rules.

Proposed numbering changes attempt to impose a more logical organization upon the most widely applicable rules of the commission by taking advantage of newly available chapters in Title 30. Chapters 1-99 will be reserved for the procedural rules and broadly applicable substantive rules of the commission. By locating generally applicable rules at the beginning of Title 30, commission rules should be organized in a more logical and user-friendly format. The proposed new format consists of the following reservation of chapters: Chapters 1-10-general rules of the commission; Chapters 11-20- miscellaneous provisions not specific to any media; Chapters 20-29-rulemaking; Chapters 30-49-application procedures; Chapters 50-69-processing of applications; Chapter 70-79-enforcement; Chapter 80-89-hearings-contested/other. The current proposal conforms to this new format.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.



This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606176 Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation Commission

Effective date: May 27, 1996

Proposal publication date: March 19, 1996

For further information, please call: (512) 239-1966

## Chapter 264. Alternate Dispute Resolution

### • 30 TAC §264.20

The commission adopts the repeal of §264.20, concerning procedural rules, without changes to the proposed text as published in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2163).

The effect of this action is to continue the existing procedural rules in effect until the commission acts on the proposed new rules.

This adoption is part of the second phase (Phase II) of an ongoing project to reorganize, clarify, and consolidate the procedural rules of the commission. The first phase of the project (Phase I) was intended to implement recent legislation and was completed in the summer of 1995. Phase I made limited substantive changes to the commission's rules and began limited reorganization. Phase II is a more ambitious attempt to reorganize and consolidate the commission's procedural rules, and to eliminate conflicting procedural requirements based solely on media or type of hearing. By consolidating these rules, the commission seeks to cut back on the duplication of requirements and definitions that might create unwarranted non-statutory differences in the treatment of persons working with the commission. As part of this ongoing project, the commission is continuing to examine program and media specific rules for inconsistency with the general rules of the agency. It is anticipated that any further consolidation will be proposed as amendments to specific programs or chapters and not as a further major revision to these procedural rules.

Proposed numbering changes attempt to impose a more logical organization upon the most widely applicable rules of the commission by taking advantage of newly available chapters in Title 30. Chapters 1-99 will be reserved for the procedural rules and broadly applicable substantive rules of the commission. By locating generally applicable rules at the beginning of Title 30, commission rules should be organized in a more logical and user-friendly format. The proposed new format consists of the following reservation of chapters: Chapters 1-10-general rules of the commission; Chapters 11-20- miscellaneous provisions not specific to any media; Chapters 20-29-rulemaking; Chapters 30-49-application procedures; Chapters 50-69-processing of applications; Chapter 70-79-enforcement; Chapter 80-89-hearings-contested/other. The current proposal conforms to this new format.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606177 Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation Commission

Effective date: May 27, 1996

Proposal publication date: March 19, 1996

For further information, please call: (512) 239-1966

## Chapter 265. Procedures Before Public Hearings

### Subchapter H. Expiration

#### • 30 TAC §265.170

The commission adopts the repeal of §265.170, concerning procedural rules, without changes to the proposed text as published in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2168).

The effect of this action is to continue the existing procedural rules in effect until the commission acts on the proposed new rules.

This adoption is part of the second phase (Phase II) of an ongoing project to reorganize, clarify, and consolidate the procedural rules of the commission. The first phase of the project (Phase I) was intended to implement recent legislation and was completed in the summer of 1995. Phase I made limited substantive changes to the commission's rules and began limited reorganization. Phase II is a more ambitious attempt to reorganize and consolidate the commission's procedural rules, and to eliminate conflicting procedural requirements based solely on media or type of hearing. By consolidating these rules, the commission seeks to cut back on the duplication of requirements and definitions that might create unwarranted non-statutory differences in the treatment of persons working with the commission. As part of this ongoing project, the commission is continuing to examine program and media specific rules for inconsistency with the general rules of the agency. It is anticipated that any further consolidation will be proposed as amendments to specific programs or chapters and not as a further major revision to these procedural rules.

Proposed numbering changes attempt to impose a more logical organization upon the most widely applicable rules of the commission by taking advantage of newly available chapters in Title 30. Chapters 1-99 will be reserved for the procedural rules and broadly applicable substantive rules of the commission. By locating generally applicable rules at the beginning of Title 30, commission rules should be organized in a more logical and user-friendly format. The proposed new format consists of the following reservation of chapters: Chapters 1-10-general rules of the commission; Chapters 11-20- miscellaneous provisions not specific to any media; Chapters 20-29-rulemaking; Chapters 30-49-application procedures; Chapters 50-69-processing of applications; Chapter 70-79-enforcement; Chapter 80-89-hearings-contested/other. The current proposal conforms to this new format.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606178 Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation Commission

Effective date: May 27, 1996

Proposal publication date: March 19, 1996

For further information, please call: (512) 239-1966

## Chapter 327. Spill Prevention and Control

### Spill Reporting

#### • 30 TAC §§327.1-327.5

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new §§327.1-327.5, concerning reporting dis-

charges or spills, with changes to the proposed text as published in the November 17, 1995, issue of the *Texas Register* (20 TexReg 9535).

The commission is adopting these spill response rules (spill rules) to effectuate its powers, responsibilities, and authorities regarding discharges or spills under the Texas Water Code, Chapter 26, and the Texas Health and Safety Code, Solid Waste Disposal Act, Chapter 361.

The commission accepted public comment on the proposed rules for 30 days following publication on November 17, 1995. The agency held a public hearing to accept oral and written comment on the proposed rule at commission offices in Austin, Texas on December 4, 1995. The following provided oral comment at the hearing: Houston Lighting & Power (HL&P); Texas Association of Businesses and Chambers of Commerce (TAB&CC); and Texas Utilities Services, Inc. (TU). Written comments were received from the following: Amoco Corporation (Amoco); Brazos Electric Cooperative (BEC); Brown McCarroll & Oaks Hartline (Brown McCarroll); Clark Refining & Marketing, Inc. (Clark); Colonial Pipeline Company (Colonial); Diamond Shamrock; DuPont Engineering (DuPont); Eastman Chemical Company—Texas Eastman Division (Eastman Chemical); Exxon Pipeline Company (Exxon); Formosa Plastics Corporation, (Formosa Plastics); GATX Terminals Corporation (GATX); Harris County Pollution Control Department (HCPC); Houston Lighting & Power (HL&P); Howell, Linfor, Bones & Moore (HLBM); Huntsman Corporation (Huntsman); Lower Colorado River Authority (LCRA); Occidental Chemical Corporation (Occidental Chemical); Red Star Yeast Products (Red Star); Shell Oil Products Company on behalf of Shell Pipe Line Corporation (Shell); SMQI Services, Inc. (SMQI); Southeast Texas Environmental Managers (STEM); Sterling Chemicals, Inc. (Sterling Chemicals); Texas Chemical Council (TCC); Texas Department of Transportation (TXDOT); Texas General Land Office (GLO); Texas Mid-Continent Oil & Gas Association (TMOGA); Texas Utilities Services, Inc. (TU); Union Pacific Railroad Company (Union Pacific); The University of Texas System (UT); Unocal Corporation (Unocal); Vinson & Elkins; and one individual citizen.

The commission is currently undertaking a project to streamline and bring consistency to its rules. Toward that end, the commission has proposed new 30 Texas Administrative Code (TAC) Chapter 3, which will set forth definitions that apply to all agency rules. As a result, the commission has removed the definitions in proposed §327.2 for "agency," "commission," "executive director," "person," and "TNRCC," in the final rule because these terms will be defined in Chapter 3.

In addition, the commission intends to avoid use of the term "TNRCC" in its rules. Instead, "commission" and "agency" will be used as appropriate. "Commission" means the three commissioners acting in their official capacity, and "agency" means the commission, executive director, and their staffs. This has resulted in several changes in the final rule. References to "Commission on-scene coordinator" in §327.2 and §327.5(b) have been changed to "Agency on-scene coordinator." A reference to "TNRCC" in the proposed definition of "Emergency Response Team" has been changed to "agency." The reference to "commission" in proposed §327.3(c) has been changed to "agency." Finally, the reference to "TNRCC regional manager" in proposed §327.5(c) has been changed to "agency regional manager."

The proposed rule used the terms "must" and "shall" interchangeably to describe required action. The commission has replaced all references to "must" with "shall" in the final rule for purposes of consistency. This affects proposed §327.3(b)-(e), §327.3(g)-(h), §327.3(j)(1), §327.5(b)-(c), and §327.5(c)(1)-(3).

The commission received a number of general comments. Diamond Shamrock submitted comments supporting adoption of the rule without further changes. Exxon commented that the Texas Water Code only provides authority to regulate spills into water, and believes the TNRCC is going beyond its jurisdiction in requiring spills onto land to be reported. The commission disagrees. The Texas Water Code, §26.039, defines a spill as an "act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run, or otherwise enter water in the state." The Texas Water Code, subchapter G, affirms this policy for spills of hazardous substances. Subsection 26.039(c) further states that, "Activities which are inherently or potentially capable of causing or resulting in spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which

the commission may adopt or issue..." Spills to land represent a potential source of groundwater and surface water contamination, and the Texas Water Code, Subchapter G, §26.039, provides adequate statutory authority to regulate such spills. GLO disagrees with the assumption stated in the preamble to the proposed rule that spills onto land are less likely to present a negative impact to human health because land spills can contaminate groundwater. The commission does consider spills to land to be less likely to threaten human health and environment than spills to water because spills to water cannot be contained as easily as spills to land. Additionally, spills to water may cause ecological incidents such as fish kills, and can migrate more quickly to drinking water intakes.

The commission originally proposed spill rules in the *Texas Register* on August 9, 1994 (19 TexReg 6204), but the commission withdrew the proposed rules based on comments received during the public comment period. During the comment period for this proposal, several commenters addressed "historical contamination," which was included in the August 1994, proposal but was not included in the November 1995, proposed rule. Clark, TCC, Vinson & Elkins, and STEM requested that the commission clarify in the preamble that these rules do not apply to historical contamination, believing that other programs adequately address corrective action. Further, they believe the definition of "Discharge or spill" could cause confusion because it is so broad that a literal reading of the definition could require reporting of historical contamination. The commission affirms that these rules do not apply to historical contamination. TCC, STEM, DuPont, and Unocal further requested the addition of a paragraph in §327.1(b) stating that these rules do not apply to historical contamination. The commission does not consider it necessary to add the exemption to the final rule. Unocal, Vinson & Elkins, and STEM did note that the commission could clarify that these rules do not affect a party's obligations to report newly discovered groundwater contamination under the Texas Water Code, §26.039. The commission agrees.

GATX wanted to know which, if any, regulations other than these rules address historical contamination. In response, regulatory programs at the TNRCC such as the Voluntary Cleanup Program and the Risk Reduction Rules relate to notification of site remediation, and real estate laws require owner disclosure of known environmental problems at a site. Section 330.953 of the municipal solid waste regulations requires notification of discovery of closed municipal solid waste landfills during investigation; however, those rules only apply to municipal landfills. Currently there are no other commission rules addressing reporting of historical contamination. As noted in the previous paragraph, persons who discover historical contamination are guided by the Texas Water Code, §26.039, as they were before this rulemaking.

LCRA commented that it was concerned with the lack of record keeping requirements, and that the rules should establish some minimum requirement in order to track repeated, non-reportable releases because the cumulative risk of repeated releases can far exceed the risk posed from reportable releases. In response, the commission is concerned that record-keeping requirements for non-reportable releases represent a cost to the regulated community without providing equivalent benefit for the public. Furthermore, responsible persons are reminded that any discharge or spill is subject to response actions even if the discharge or spill is not reportable. Although this should address LCRA's concern, the commission will closely monitor the implementation of the rule to determine if single or cumulative small releases represent a potential threat to human health and waters in the state. If this is the case, the rule could be amended in the future to require more recordkeeping.

Colonial submitted a comment stating that the rules should incorporate the Unified Command System as part of the immediate response to a spill. Colonial is concerned that any spill of oil or a hazardous substance into waters in the state will require notification to all federal and state natural resource trustees in addition to the TNRCC. In response, this rule is intended to address only the RP's initial notification to the agency for reportable quantity spills and the RP's response to the spill. The agency is a member of the National Contingency Plan, Regional Response Team and, in that capacity, has the responsibility of coordinating with other state and federal response agencies. This coordination includes notifying state and federal natural resource trustees when spills occur. This notification process is as follows: 40 Code of Federal Regulations (CFR) 300.300(d) requires that the National Response Center notify the Federal On-Scene Coordinator (OSC). The OSC shall

ensure notification of the appropriate state agency; 40 CFR 300.305(e) which requires the OSC to notify the natural resource trustees promptly; 40 CFR 300.410(h) requires the OSC or lead agency promptly notify the natural resource trustees so that appropriate actions and coordinations of all response activities with such affected trustees; and 40 CFR 300.615(b) requires the Trustees to designate the appropriate contacts to the Regional Response Teams, Area Committees for inclusion in the Regional Contingency Plan and the Area Contingency Plans.

In addition, the three State response agencies, GLO, RRC and the TNRCC, upon adoption of these rules, will publish the State of Texas Oil and Hazardous Substances Spill Contingency Plan which describes the roles and responsibilities of the state and federal agencies in their response to spills and may be described as the regulatory agencies "Unified Incident Command System."

Formosa Plastics noted that the proposed rules do not address the issue of less-than-reportable-quantity (RQ) spills which result in a waste due to cleanups. Formosa suggested that the commission clarify its intent concerning these wastes. Under the February 1992 Texas Water Commission Notification Policy for Spills, Formosa has reported these wastes. The commission emphasizes that these rules replace the notification policy which Formosa referenced. Anytime an RP wants technical assistance in spill response incidents, such as assignment of waste codes to spill-related wastes, the RP should report the spill or discharge and request the agency's assistance. That assistance may be spill waste classification, or guidance on appropriate abatement measures or cleanup methods. Nothing in these rules prohibits a party from requesting assistance for spills below the RQ.

Section 327.1 addresses applicability. There were no comments on proposed §327.1(a). The commission received a number of comments on §327.1(b), which establishes those discharges or spills to which Chapter 327 does not apply. Concerning §327.1(b)(1), which refers to the jurisdiction of the GLO for coastal oil spills, two comments were submitted. Colonial requested clarification because there are many locations where a spill could "threaten" coastal waters in the state. The commenter is concerned because it is not clear which agency has jurisdiction in such an instance. The commission is adopting by reference the definition of "Coastal waters" that appears in 31 TAC §19.2 of the GLO rules. That definition specifically delineates coastal waters, which should assist persons in determining if a spill is affecting coastal waters. Ultimately this should not be a concern for RPs because the agency will contact GLO if the TNRCC receives a spill report that it believes is under GLO's jurisdiction. GLO will do the same. In addition, calls can be made to the State Emergency Response Center at 1-800-823-8224, and the Response Center will direct the spill report to the appropriate agency. Howell, Linfor suggested that the paragraph should be changed to reflect the role of the Railroad Commission of Texas in coastal oil spill response. They note that the GLO is the lead agency for spills of oil, including crude oil, into coastal waters or that pose an imminent threat to coastal waters if not abated; however, the Railroad Commission is the on-scene coordinator for coastal spills of 240 barrels or less. The commission agrees with the comment and the language is changed in the final rule.

The commission received a comment from Occidental Chemical concerning §327.1(b)(3), which exempts from these rules air releases reported under 30 TAC §101.6 (relating to Major Upsets) and §101.7 (relating to Notification Requirements for Maintenance). It believes the paragraph should not be adopted because it is legally deficient. The comment stated that the Texas Water Code definitions of "discharge" and "spill" in §26.039 and §26.263 are expressly limited to situations affecting water. As proposed, any air release other than those reported under §101.6 and §101.7 presumably would be subject to the spill rules, and the TNRCC did not invoke its authority under the Health and Safety Code, Chapter 382 (the Texas Clean Air Act) in adopting these rules. The commenter requests the TNRCC consider proposing air release notification rules that use the approach of 40 CFR Part 302. The commission did not intend for the proposed rules to cover air releases, and has amended the proposed rule by exempting all air releases from Chapter 327 to avoid any confusion. The commission wishes to clarify that a release to air that later lands on the ground or water does not need to be reported under these rules if it is reported under another reporting requirement such as §101.6 or §101.7.

Occidental Chemical also commented on proposed §327.1(b)(7), which concerns reporting under permit, order, or other rule. The commenter

believes that this provision appears to establish an immediate reporting requirement for noncompliant discharges regardless of whether or not the discharge exceeds the RQ during a 24-hour period. The commission understands that the term "noncompliant" may be confusing, so "noncompliant" has been replaced with "not so authorized." The commission has made two grammatical changes in §327.1(b) (7). The proposed rule stated that Chapter 327 does not apply to, "discharges which are authorized by a permit, order, or rule issued pursuant to federal law..." The final rules states, "discharges that are authorized by a permit, order, or rule issued under federal law..."

Proposed §327.1(b)(9) stated that these rules do not apply to discharges or spills occurring during the normal course of transportation about which carriers are required to give notice and report under 49 CFR §171.15 and §171.16. Union Pacific believes it is appropriate to completely exempt transportation incidents from the proposed rules since the rules effectively revise RQs for hazardous materials and redefine "hazardous materials" to include "other substances," which only the United States Department of Transportation (U.S. DOT) has the authority to revise. Howell, Linfor commented that under the Emergency Planning and Community Right-to-Know Act, 40 CFR Part 355, hazardous substance spills resulting from transportation incidents are required to be immediately reported to local first responders, the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (TNRCC in this case), and the National Response Center. The commenter further noted that if immediately is presumed to be in the same context as it is in other federal regulations such as the Oil Pollution Act of 1990, it generally means within one hour. An individual citizen submitted a comment objecting to the transportation exclusion because data show that transportation events have had much more severe impacts on human health than impacts associated from events at fixed facilities. In addition, spills occurring during transportation will represent a significant proportion of spills meeting the new RQs.

Because this exemption was included in the proposed rule, the commission retains this exemption in the final rule. However, the commission is concerned about the potential impact of transportation spills. Therefore, immediately after the effective date of this rule, the commission plans to propose an amendment to these rules which will remove this exemption.

Proposed §327.1(b)(10) exempted spills of used oil from these reporting requirements because they were addressed in proposed rules for newly adopted 30 TAC Chapter 324, which relates to the management of used oil (used oil rules). TAB&CC, Brown McCarroll, Sterling Chemicals, TCC, UT, TU, and HL&P requested deletion of this paragraph, stating that all spill reporting requirements for oil and used oil should be under Chapter 327. The commission agrees with this comment and has deleted this paragraph. Because the used oil rules were adopted before the spill rules and the used oil program is seeking federal program delegation, it was necessary to include a reporting requirement for spills of used oil in the used oil rules in addition to these rules. The used oil rules require a 25-gallon RQ for spills of used oil from do-it-yourselfer used oil collection centers and defer to these rules for RQs of used oil from other sources. Please note that requirements for reporting and response actions for spills of used oil from regulated petroleum storage tanks (PSTs) are set forth in 30 TAC Chapter 334.

Eastman Chemical requested the addition of a new §327.1(b)(11) to exempt discharges or spills to certain waters such as noncontact cooling ponds, impoundments, and stormwater pathways, but to require reporting for spills or discharges to impoundments, reservoirs, and drainage ways which discharge to surface waters in the state. The commission is concerned that such a broad statement will confuse persons attempting to comply with the rule. As the preamble to the proposed rule stated, spills to waters listed by the commenter are not reportable **as long as they fit the descriptions in §327.1(b)**. In most cases, non-contact cooling ponds, impoundments, and stormwater pathways will be covered by exemptions in subsection (b), notably paragraph (7), which addresses permits and orders. The commission has not added this language to the final rule.

Section 327.2 establishes definitions. The commission received a large number of comments concerning the proposed definitions. The proposed rules defined "Coastal waters" as "Surface waters subject to the tide and located in or bordering counties of Texas having a shoreline, and that portion of the Gulf of Mexico subject to the jurisdiction of the State of Texas." GLO commented that it has a very specific definition of

tidally influenced waters in its regulations at 31 TAC §19.2 and that definition should be referenced for consistency. The commission agrees with this comment and the change has been made.

Several comments were submitted concerning "Discharge or spill," which was proposed as "An act or omission by which oil, hazardous substances, waste, or other substances are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in the State of Texas or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in the State of Texas." Formosa Plastics and GLO note that the definition in the rules only considers releases into water in the state and not to land. GLO recommended expanding the definition to include spills to land. Formosa suggested that the rules use the definition of discharge in 40 CFR, §260.10, concerning hazardous waste discharges. Further, they note that for purposes of these rules, the definition could be refined to include oil and hazardous substances. The commission responds that the definition of "Discharge or spill" is a combination of the definitions in the Texas Water Code, §26.039 and §26.263. The commission does not consider it necessary to amend the statutory definition by rule. TMOGA stated that the last part of the definition is unclear and could be interpreted as applying to previously permitted discharges or discharges in exceedance of permit levels that are reported under the permit. The comment states that permit exceedances that are subject to reporting under the permit should be exempted. In response, the commission notes that §327.1(b)(7) exempts from the spill rules those spills that are covered by a permit. Occidental Chemical interprets the statement in the definition that "controlling or removing" substances so that entry into waters in the state does not occur or may not occur means that undertaking these measures prevents the deposit from being a reportable discharge or spill. The commission disagrees with this comment, and regards the statement "if not controlled or removed" to mean that a spilled substance would eventually enter waters in the state if no action to control or remove the spill was taken, and these spill rules, therefore, require reporting. The commission retains "Discharge or spill" as proposed.

"Emergency response team" was defined as "A unit of the TNRCC that is responsible for responding to spills and discharges under the agency's jurisdiction." In addition, the commission considers the emergency response team's duty to be coordinating the response to spills or discharges rather than responding to spills or discharges. The definition in the final rule includes this change to more accurately reflect the role of the emergency response team.

"Facility" was defined as "Any structure or building, including contiguous land, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any site or area where a discharge or spill has occurred or may occur." TCC requested clarification that the term "contiguous" describes "land" and suggested that adding the word "or" after land will alleviate any confusion. The commission agrees that this change will add clarity, and the proposed language has been modified in the final rule. TCC and GLO suggested deletion of the language at end of the definition, "or any site or area where a discharge or spill has occurred or may occur," because it is unnecessary and implies that threatened discharges are subject to this rule. The commission disagrees with the comment. Only actual spills or discharges meeting the criteria established by the rules are subject to the rules. Furthermore, the commission notes that the definition of facility in these rules is consistent with the definition of facility in the Health and Safety Code, §361.181, the Solid Waste Disposal Act, and with the commission's jurisdiction over "activities which are potentially capable of causing or resulting in spillage," given in the Texas Water Code, §26.039(c). GLO further recommended amending the definition to include a reference to §327.1(b)(9) to avoid confusion created by the inclusion of "motor vehicles" and "rolling stock." The commission retains the proposed definition because spills from motor vehicles and rolling stock that are not reported under 49 CFR §171.15 and §171.16 must be reported to the state.

The definition for "Industrial waste" proposed by the commission was taken directly from the Texas Water Code, which defined it as "Waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business." Eastman Chemical, Brown McCarroll, TCC, and DuPont expressed concern that all products made by a business would be considered industrial waste under the definition. They recommended changing the definition so that the materials are industrial solid wastes or to clarify that some type of discarding activity is necessary before a product becomes a waste. Eastman Chemical and TCC also recommended adding "contained"

before gaseous substances or deleting the reference to gaseous substances because these rules do not cover releases to air. BEC suggested deleting the term "waterborne" from the definition because not all liquids are waterborne. The commission agrees that the definition is confusing, and is amending the definition to be consistent with the definition of industrial solid waste in 30 TAC Chapter 335. Industrial solid waste is defined in Chapter 335 as "Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in §335.1 of this title (relating to Definitions)." Consistent with this change, §327.4(c) is amended to require the reporting of spills of industrial solid waste rather than simply industrial waste. Finally, Exxon and Occidental Chemical suggested limiting industrial waste to only Class 1 Industrial Waste and Municipal Hazardous Waste because those wastes have the potential to cause a toxicological effect. In response to the comment from Exxon and Occidental Chemical, the commission notes that Class 2 and Class 3 waste can cause incidents of pollution.

The proposed rules contained separate definitions for used oil and oil. The commission received many comments on these definitions. Oil was defined as "Oil of any kind or in any form, **except used oil**, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." Used oil was defined as "oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities." Exxon believes that it is not necessary to redefine the term "oil" because there are existing definitions for oil such as that found in §335.1. The commission notes that §335.1 does not contain a definition for oil. There is a definition for petroleum substances; however, this definition is limited to oils and refined product derived only from petroleum. TAB&CC, Brown McCarroll, TMOGA, TCC, DuPont, UT, TU, and HL&P all commented that used oil should be included in the definition of oil and the separate definition for used oil should be stricken. In addition, doing so would establish the same RQ for used oil and oil. GLO commented that it is not clear how used oil should be reported since it is excluded from the definition of oil. The commission responds that the Texas Health and Safety Code, Chapter 371, provides a clear statutory mandate for the regulation of used oil. Based on this statutory guidance, the commission considers it appropriate to differentiate between oil and used oil, including spills or discharges of used oil. The commission retains the definitions of oil and used oil, and continues to exclude used oil from the definition of oil. However, the final rules include RQs for used oil to consolidate spill reporting requirements. TMOGA further requested that no differentiation be made between automotive used oil and other used oil. In response, these rules do not differentiate between automotive used oil and other used oil, but differentiate between the sources of used oil (ie. electric generating facilities, petrochemical plants, refineries, etc.). LCRA suggested exempting oils used solely for cooling or insulation, such as transformer oil, from the definition of used oil because they do not contain additives that would make them more toxic. The commission responds that the definition of oil is intended to cover a broad range of oils, including transformer oil, and therefore has not excluded transformer oil from the definition in the final rules.

GLO also commented that the definition of oil includes vegetable oils but the definition of used oil is limited to petroleum-derived oils. GLO stated that the definitions should be made consistent with each other. In response, the commission notes that the statute creating the used oil program, Senate Bill (SB) 1683, 74th Legislature, limits used oil to petroleum-derived substances or synthetic oils. The definition for oil is derived from the federal Clean Water Act (33 U.S.C. §1321(a)) and includes vegetable oils which can cause a sheen on water. TCC wanted the commission to clarify whether refined products such as gasoline fall under the definition of "oil." The commission responds that the intent of the proposed rule was to include refined product such as gasoline in the definition of oil. Based upon decisions made regarding the RQ for oil and refined product and for purposes of clarity, the proposed definition of oil has been changed to exclude petroleum product and oil designated as a hazardous substance in 40 CFR §302.4. The definition for petroleum product in 30 TAC §334.122, which is limited to propulsion fuels such as gasoline, has been added to the rule. Finally, GLO requested that the rule define "contaminated" in the definition of used oil, noting that oil can be contaminated with hazardous substances or it can be contaminated with water. The commission responds that used oil is any oil that has been used for its intended purpose as such, it could be contaminated with water.

The definition of "Other substances" also generated comments from several entities. Other substances was proposed as "Substances other than hazardous substances or oil that may be useful or valuable and therefore are not ordinarily considered to be waste, but that will cause pollution if discharged into water in the state." Huntsman, Eastman Chemical, TCC, DuPont, and GLO stated that the definition is overbroad and vague and should be deleted from the rule. TMOGA requested that the commission discuss the concerns that other substances present. The commission responds that the definition of other substances is taken directly from the statute. Removing "other substances" from the rule would require RPs to determine reportable spills under the general guidance of the Texas Water Code, §26.039. This contradicts the purpose for implementing the spill rules, which is to provide clarity and consistency. The commission emphasizes that spills or discharges of other substances are required to be reported only if they are spilled to water in amounts above the RQ. Those spills or discharges can create incidents of pollution. For example, a spill of ordinary flour lowers the oxygen level in water and blocks sunlight, and a spill of molasses results in biological oxygen demand (BOD) loading which takes oxygen away from plant and animal aquatic life. In addition, requiring the reporting of spills of other substances will catch spills of newly derived substances which could be hazardous but have not been added to the list of hazardous substances in 40 CFR §302.4. The commission retains the definition of other substances; however, the statement that other substances are not hazardous substances or oil has been removed so that the definition is consistent with the statutory definition. Spills to land of other substances remain subject to the general notification requirements in the Texas Water Code, §26.039.

Eastman Chemical commented on the definition for "Pollution." The proposed definition of pollution was "The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose." Eastman Chemical asserted that the definition is vague, over broad, and will lead to over reporting of insignificant releases, and requested deletion of the definition from the rule. The commission responds that the definition of pollution is the same as found in Texas Water Code, §26.001; therefore, the commission retains the definition as proposed. The commission emphasizes that in order to compensate for the uncertainty caused by the statutory definition, the rule establishes reportable quantities.

Although the commission did not receive any comments regarding the proposed definition for the "Regional response team," the term is not used in the spill rules, and therefore does not appear in the final rule.

The proposed definition for "Responsible Person" was "A person who is: (A) the owner, operator, or demise charterer of a vessel from which a discharge or spill emanates; (B) the owner or operator of a facility or unit from which a discharge or spill emanates; or (C) any other person who causes, suffers, allows, or permits a discharge or spill." Brown McCarroll and Occidental Chemical requested the commission define the term "unit" in subparagraph (B), provide some guidance to assist persons in complying with the rules or delete it. The commission is deleting the term "unit" because the definition of facility covers all units.

The commission received several comments on the definition for "Water or water in the state" which was proposed as "Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface waters, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state." BEC commented that "impounding reservoirs" does not mean anything and the rules should be changed to separate the two. In response, the term "impounding reservoirs" appears in the definition of "Water" in Texas Water Code, §26.001. It is intended to address impoundments and reservoirs. The commission acknowledges that the language can be confusing, but does not wish to alter the statutory definition of water solely for these rules. BEC also suggested adding "swamps" to the list of aquatic habitats because marsh and swamp are not synonymous. The commission has not made the recommended change because the comprehensive nature of the definition of "Water

or water in the state" will cover swamps. GLO recommended adding "playas" to the definition. The commission does not consider it necessary to include playas in the definition. RPs should use their professional judgement to determine if a spill into a playa is a reportable spill. As general guidance, the RP should use the RQs for spills to water if there is any water in the playa before the response actions are complete, and the RQs for spills to land if there is no water in the playa through the completion of the response action.

Proposed §327.3 sets forth notification requirements for discharges or spills required to be reported under Chapter 327. LCRA submitted a general comment concerning this section requesting that the commission clarify that responsible parties are still required to cleanup the spill by clearly stating the applicable remediation requirements in the rule. LCRA suggested using similar language found in 30 TAC §334.75(b) of the PST rules. Based on this comment and comments discussed later in the preamble, the commission has amended §327.5, Actions Required, to require the RP to immediately abate and contain the spill, and clearly sets forth additional actions that the RP may use to respond to any spill.

Subsection 327.3(a) establishes what is a **reportable** discharge or spill. The commission received a comment from an individual citizen on this subsection. The person recommended adding performance criteria to the rules to require reporting even when the RQ has not been exceeded such as any spill that causes an injury to people or the environment such as illness, fish kills, or defoliation. The commission responds that additional reporting requirements are included in §327.3(g) which requires notification of a spill to local government officials if the spill creates an imminent health threat. In developing the proposed rule, the commission considered requiring reporting if certain events such as fish kills resulted from spills less than the RQ, but determined that such exceptions add uncertainty to the goal of clear reporting standards. As noted earlier, the agency will closely monitor the implementation of the new rules. If it appears that certain human health, safety and ecological impacts are occurring due to spills below the RQ, the agency could revisit the issue in the future. The commission retains §327. 3(a) as proposed. Based on the change from "industrial waste" to "industrial solid waste" discussed earlier in the preamble, the reference to "industrial waste" in §327.3(a) has been changed to "industrial solid waste." Also, petroleum product and used oil have been added because §327.4 now differentiates between oil, petroleum product, and used oil.

Subsection 327.3(b) describes initial notification requirements. UT requested that the commission clarify that this notice provision is intended to be the same as 42 USC §9603(a). Section 9603(a) requires that RPs notify the National Response Center of a release of hazardous substances in quantities equal to or greater than the federal RQs. The requirement is codified in the United States Environmental Protection Agency (EPA) regulations at 40 CFR §302.6. The commission responds that notification under this subsection is not the same as notification to the National Response Center. Notifying the National Response Center does not relieve persons of the notification requirements under the Texas Water Code and these rules. The commission has attempted to be consistent with federal reporting requirements to the extent possible with the adoption of Comprehensive Environmental Responsibility, Compensation, and Liability Act (CERCLA) RQs for most spills of hazardous substances, and in many cases RPs will only be required to notify the State when they notify the National Response Center. Huntsman, TCC, and DuPont note that the proposed subsection required notification after a "determination" that a spill has occurred and required reporting the spill not later than 24 hours after "discovery" of the spill. Because it can take longer than 24 hours to determine if a **reportable** spill has occurred, Huntsman suggested adding language to allow the spill to be reported not later than 24 hours after it is discovered and/or 24 hours after it is determined that the spill is reportable, whichever is greater. TCC and DuPont commented that reporting should occur not later than 24 hours after determination that a spill or discharge had occurred. Similarly, Brown McCarroll suggested requiring initial notification no later than 24 hours after discovery of a **reportable** spill or discharge. GLO commented that the rule should be amended to require immediate notification rather than notice within 24 hours, because the first 24 hours after a spill or discharge are the most critical in abating and containing the spill. The commission responds that the 24-hour notice requirement is derived from the Texas Water Code, §26.039(b), which states that, "the individual...shall notify the commission as soon as possible and not later than 24 hours after the

occurrence." The rule uses the same language to be consistent with the statute and to alleviate confusion that results from the use of "immediately." The commission retains the language in subsection (b) as proposed, and emphasizes that the purpose of spill reporting is to allow the agency the opportunity to respond to spills that present threats to human health and the environment. Determining whether a spill is reportable can take several days, during which time significant health or ecological impacts can occur. The commission acknowledges the uncertainty that often surrounds an accidental spill and the practical complexities of determining the actual amount spilled. Based on this knowledge, the commission is adopting §327.3(f), Correction of records, which allows a "non-reportable" spill to be corrected in the records. Further, if it takes longer than 24 hours to determine if a reportable quantity has been spilled, reporting within the 24-hour time frame exempts the RP from potential penalties.

Also concerning §327.3(b), HCPC commented that local pollution control programs must be included in the initial notification, because the notification requirements of §327.3(g) are inadequate since not all local pollution control programs are affiliated with the local emergency planning committees (LEPCs). It noted that in some cases, TNRCC regional offices refer cases to these local programs through formal or informal cooperative agreements. The commission is not including notification to local pollution control programs in the initial notification in order to avoid creating additional reporting requirements for persons reporting spills. However, the commission responds that nothing in this rule prevents local governments from coordinating notification of spill events with the agency or with the regulated industries. Local programs are encouraged to work with the regional offices, as HCPC noted has occurred previously, to set up a system of communication with regard to spill reporting.

Subsection 327.3(c) establishes acceptable methods of notification. The proposed rule allowed telephone contact, personal contact, and facsimile. It stated that reporting during normal business hours should be to the commission regional office and reporting after hours should be through a state-wide number. Howell, Linfor commented that faxing should not be allowed as a method of emergency notification. An individual citizen commented that faxing should not be allowed unless parties receive confirmation during the 24-hour reporting period to ensure that the TNRCC has received the communication. The commission understands the commenters' concerns, but also believes that regional managers should have the discretion to allow reporting by fax. Persons should be aware that, of the State contacts listed in subsection (c), only commission regional offices may accept faxes. To alleviate confusion, faxing has been removed from subsection (c) as an acceptable form of notification in all instances; however, §327.3(j), "Alternative notification plans," now allows the regional manager the discretion to accept faxes. Although no comment was received, the commission has replaced the term "may notify" in proposed §327.3(c) to "shall notify" to clarify that notifying the agency of reportable spills is required.

Specifically concerning §327.3(c)(1), Clark requested the addition of language to make clear that reporting to TNRCC regional offices during normal business hours satisfies the federal requirement to notify the State Emergency Response Commission (SERC) in the State of Texas. The commission confirms this statement. During normal office hours, the TNRCC and the Texas Emergency Response Center are the SERC and after normal business hours the Texas Emergency Response Center is the SERC. The final rule incorporates this change.

Regarding §327.3(c)(2), Eastman Chemical, Colonial, UT, Exxon, Red Star, Howell, Linfor, DuPont and GLO requested the state toll free number be included in the rules. Exxon and GLO commented that the state should pursue one hot line for reporting of spills so that one state agency could then report the spill to other state agencies. Reporting a spill or discharge to the 1-800 number at any time will meet the reporting requirements under these rules. The toll-free number, 1-(800) 832-8224, has been included in the final rule and is a multi-agency state-wide reporting system. The system is operated by the Department of Public Safety and reports spills to the TNRCC, GLO, and the Texas Railroad Commission. The commission acknowledges that the proposed language was not clear in this regard; therefore, subsection (c) has been amended in the final rule to clarify where and when spills can be reported.

Subsection 327.3(d) sets forth the information required in the initial notification. The commission first wishes to clarify the provision allowing copies of spill reports prepared for other agencies to be used to meet the requirements of this subsection. Those reports can only be used if they contain the information required by subsection (d). If they

do not, the RP must supplement the reports to ensure that all information required by subsection (d) is presented to the commission. Concerning §327.3(d)(2), BEC suggested amending the paragraph by stating, "the date, time, and location of the spill." The commission agrees with this comment and has amended the rule. BEC also commented on §327.3(d)(3) recommending enclosing the "s" in hazardous substances and other substances in parentheses. The commission is not making the suggested changes in the final rule because proposed 30 TAC §1.2 of commission general rules makes clear that the plural includes the singular. The commission is adding "petroleum product" to the list of substances in §327.3(d)(3) to be consistent with other changes in the final rule. In §327.3(d)(5), BEC believes the proposed language should be amended to state, "the duration of the incident if known." The commission responds that all requirements in §327.3(d) apply only "to the extent known."

Concerning §327.3(d)(6), Occidental Chemical wanted the commission to clarify that the requirement to describe the soil affected or threatened by the discharge or spill is only necessary if substances spilled have not been "controlled or removed." The commission considers the inclusion of "or the soil" in the paragraph to be confusing, and has removed this phrase in the final rule. The name of the surface water or description of waters in the state affected should be sufficient.

Regarding §327.3(d)(8), GLO commented that the paragraph should include a provision that the RP identify any environmentally sensitive areas or natural resources at risk. The commission agrees with the commenter that this information should be reported, and has added this requirement to the paragraph.

Based upon comments received on §327.5, the commission has replaced "cleanup" with "response action" (see response to comments on §327.5). Consistent with this change, "respond to" replaces the reference to "cleanup the site" in §327.3(d)(10). GLO commented on §327.3(d)(11), recommending that the paragraph be amended to require the RP identify any known or anticipated risks to the environment. The commission does not agree with the comment. These rules focus on the initial reporting and response to the spill. Potential and actual risk and injury to the environment are best addressed on an incident by incident basis by the lead response agency and the current provisions for coordination with State and Federal Natural Resource Trustees as provided in 30 TAC §327.31 and 40 CFR Part 300. Furthermore, the change to §327.3(d)(8) should provide a general identification of ecological receptors at risk. GLO recommended deletion of §327.3(d)(12), which requires the identification of any government representatives, because it believes the requirement is unduly burdensome. The commission responds that this information is readily available, and the final rule keeps this requirement.

Subsection 327.3(e) requires immediate notification to the agency whenever necessary to provide information that would trigger a change in the response to the spill or discharge. Eastman Chemical, TCC, and DuPont commented that the subsection should be amended to say that the RP will notify the agency "as soon as possible" rather than "immediately" to correspond with the requirement for initial notification in §327.3(b). Occidental Chemical also recommended against the use of "immediately." In addition, Occidental Chemical and DuPont commented that notification should only be required for significant changes in the response action rather than for any change in the response. The commission agrees with the first comment and the final rule is changed to incorporate the comment; however, the final rule does not incorporate notification for only "significant changes."

Subsection 327.3(f) discusses correction of records. The proposed rule allowed the executive director to remove from agency records all supporting documentation concerning a spill or discharge if it was determined by the reporting party and the executive director that the spill or discharge was not a reportable spill or discharge. UT and DuPont commented that they strongly support this section. Howell, Linfor and an individual citizen disagreed with the proposed language, stating that the records should be maintained in the agency files along with supporting documentation that the release did not result in a reportable discharge or spill. The commission agrees that documentation of spills or discharges should not be removed from the agency records. The final rule continues to allow for correction of records, and all documentation including any documentation that a reportable spill or discharge did not occur will be retained in the record. Subsection (f) is amended in the final rule. The commission points out that this rule is consistent with the National Response Center's procedure for addressing spills that have been reported in error.

Subsection 327.3(g) establishes requirements for notification of local

government authorities. The commission received several comments on this subsection. Shell and Brown McCarroll requested that the commission define "imminent health threat" or add more specificity and parameters to avoid subjective interpretations. Occidental Chemical further noted that many responders are not technically qualified to determine if a spill presents an imminent health threat. The commission acknowledges "imminent health threats" is a subjective term; however, it is a generally recognized term used to describe environmental threats that have the potential to cause injury to humans through exposure. Professional judgement should be used to determine if a spill creates an imminent health threat. Characteristics to consider include toxicity, ignitability, corrosiveness and mobility of the substance spilled in addition to proximity of human receptors to the spill incident. Shell commented that language requiring the responsible party to cooperate with local emergency authorities should be deleted or amended to say that the RP should provide support to the local emergency authority rather than "will cooperate with the local emergency authority." The commission considers "cooperate" to be an appropriate term, and the final rule retains this requirement. Union Pacific requested that the commission delete the last sentence in the proposed subsection which states, "In the absence of a local emergency authority, the RP must take reasonable measures to notify potentially affected persons of the imminent health threat." Union Pacific argues that the Superfund Amendments and Reauthorization Act (SARA), <sup>TM</sup>303, delegates responsibility and authority to notify potentially affected parties to the LEPCs. They further state that even in an instance where an LEPC does not exist, responsible parties should not be held liable for penalties associated with an arbitrary determination of "reasonable measure" which is a local responsibility by statute. The commission disagrees. An RP should have some responsibility for attempting to notify potentially affected persons of an imminent health threat. The commission also notes that the entire state of Texas is covered by LEPCs; however, the individual LEPC's organizational development to respond to emergency incidents can vary significantly.

Section 327.3(h) sets forth requirements for notification to property owner and residents. Red Star wanted the commission to clarify that notification is only for releases to land or water. The commission responds that these rules address only spills to land and water. Persons should be aware that a spill to land or water could also include an air release resulting from the spill which could be reportable under the commission's air rules. Shell stated that notice should be limited to property owners because all residents may not be identified within the two week time period. The commission understands Shell's concern, but has determined that the rule provides adequate flexibility by stating "... the responsible person must reasonably attempt to notify..." BEC commented that the requirements of §327.3(h) should only be required when property not owned or controlled by the RP is affected. In response, it is possible that a spill could occur on land controlled by a responsible party through a lease agreement with the property occupied by a third party. The commission considers notification to the occupant of the property in such a case to be appropriate. TXDOT suggested that notification to property owners should be via certified mail to ensure documentation of notification. The commission disagrees with this suggestion because it would not be timely. Residents may be more quickly notified through personal contact or a local warning system. Brown McCarroll requested the commission provide a definition or guidance for the term "adversely affected" as it is used in this subsection. Without clarification, Brown McCarroll argues that the regulated community's determination of adversely affect could be inconsistent with TNRCC's interpretation. In response, professional judgement should be used here. Potential for contamination or human/ecological exposure should be the initial determining factor. GLO commented that the RP should be required to immediately notify adjacent or potentially impacted property owners believing that such a requirement will minimize claims for damage. The commission responds that requiring immediate notification is sometimes impossible. It can take several days of searching through property records to determine landowners. Requiring notice as soon as possible but not later than two weeks provides adequate safeguards to landowners, occupants, and potentially affected persons. The commission retains the proposed language in §327.3(h).

Proposed §327.3(i) stated that notification under Chapter 327 does not relieve other notification requirements imposed by permit, or local, state, or federal law. Clark commented that language should be added to make clear that reporting to TNRCC regional offices during normal business hours satisfies the federal requirement to notify the SERC in the State of Texas. The commission concurs with this comment and

the language has been added to the final rule. The format of subsection (i) is amended by creating paragraphs (1) and (2) to accommodate this change. TCC commented that the State should continue efforts to create a system where one call satisfies all state reporting requirements. As noted earlier, persons reporting spills may use the 1-800 number to satisfy the spill reporting requirements of this chapter.

Subsection 327.3(j) allows for alternative notification plans for purposes of flexibility. TCC and DuPont submitted comments strongly supporting the concept of alternative notification plans. Occidental Chemical suggested replacing "alternate" where it appears with "alternative." The commission agrees with the suggestion and change has been made in the final rule in the title and the rule language.

Section 327.4 establishes RQs for substances to be reported under Chapter 327. Proposed §327.4(a) presented the RQs for reporting of hazardous substances. For spills to land, the rules proposed the RQs set forth in 40 CFR §302.4, commonly referred to as CERCLA RQs. For spills of hazardous substances to water, the rules proposed the CERCLA RQs up to 100 pounds, and for hazardous substances with CERCLA RQs over 100 pounds (either 1000 or 5000 pounds), the rules proposed a state RQ of 100 pounds. The proposed RQ for spills of oil to land was 210 gallons and the RQ for spills of oil to water was a quantity sufficient to create a sheen. The proposed RQ for spills of industrial waste and other substances into water was 100 pounds. The rules do not address spills of industrial waste and other substances onto land. For spills of these substances to land, the Texas Water Code, §26.039, and professional judgement are appropriate to apply.

The commission received many comments on proposed §327.4. Brown McCarroll and GLO noted the section number should be §327.4 instead of §327.47. The commission intended this section to be §327.4, but it was mistakenly published as §327.47. The section number is changed to §327.4 in the final rule. TXDOT commented that the maximum RQs for all substances should be lowered to 50 gallons because many RPs will not clean up a spill if it is not required to be reported. Additionally, increased truck traffic resulting from North American Free Trade Agreement (NAFTA) may increase the number of spills. TXDOT also requested that the TNRCC clarify that it will provide support and enforcement when an RP is unwilling to clean up a spill on a highway right-of-way. The commission disagrees with TXDOT's first comment because the data does not support a 50 gallon RQ for every substance. In addition, this would undermine the goal of continuity between state and federal requirements. In response to the second comment, if a threat to public safety exists and the RP will not clean up the spill, as property owner, TXDOT may contact the TNRCC for assistance to respond to the incident and to seek compliance with the Texas Water Code and the spill rules. Union Pacific recommended that for purposes of this section only, the rules should reference "surface waters in the state" rather than "waters in the state," to enable clear distinction of notification thresholds in the vast majority of spill scenarios. The commission responds that water in the state includes groundwater; therefore, referencing only surface water would be inappropriate. An individual citizen requested clarification on how and when RPs will report spills or discharges of unknown quantities. The commission responds that the determination is left to the RP. The commission recommends reporting spills of unknown quantities, and notes that reporting spills is an admission of an accidental discharge or spill which exempts them from penalties under the Texas Water Code.

Specifically regarding the RQs for hazardous substances, UT and an individual citizen generally support the section as proposed because it adds consistency between the state and federal rules. Red Star, GLO, and an individual citizen wanted the commission to clarify how the TNRCC will implement the RQs for mixtures. The commission responds that it intends to be consistent with EPA's implementation of it RQs. EPA has established a mixture rule in 40 CFR §302.6(b) which states that if the quantity of all hazardous substances is known, then notification is required where an RQ or more of any hazardous constituent is released. In cases where the quantities are known and the quantity of each hazardous substance spilled is below its RQ, the reporting of a spill or discharge is not required even if the total amount of hazardous substances spilled exceeds the highest RQ for any one hazardous substance. Therefore, reporting is based upon a single substance exceeding the RQ when known. Where the quantity of one or more hazardous constituents in a mixture is not known, notification is required when the total amount of the mixture released equals or



exceeds the RQ for the hazardous constituent with the lowest RQ. In addition, the quantity of the entire mixture that is unknown is considered to be the spilled amount for each hazardous substance. For spills to water, it is important to note that under the RQs established in this rule, any spill over 100 pounds is reportable, including spills where the hazardous substances in the mixture are below the RQs. Above 100 pounds, the mixture is considered an "other substance."

Two examples illustrate EPA's procedures. An example provided by Red Star uses ammonia which has an RQ of 100 pounds. The commenter wanted to know if a 30wt% aqueous solution of ammonia weighing 333 pounds would be a 100 lb ammonia substance for purposes of these rules. In Red Star's example, the percentage of ammonia is known. If a spill of less than 333 pounds of the ammonia mixture is spilled, a spill to land is not required to be reported.

In the second example, a 6,000 lb mixture contains 2,000 pounds of chromium (5,000 lb RQ), an unknown amount of cadmium (10 lb RQ), and unknown quantities of two nonhazardous substances. If the entire mixture is spilled, the spill of the mixture is reportable because the total quantity exceeds the 10 lb RQ for cadmium. Because the quantity of cadmium and each of the nonhazardous substances is unknown, the spill report should show the amount spilled to be 6,000 pounds (2,000 pounds of chromium plus 4,000 pounds combined other three substances). The report will show the amount of cadmium spilled to be 4,000 pounds. This is consistent with EPA's implementation of the RQs on the federal level.

Concerning §327.4(a)(1), which addresses spills or discharges to land, an individual citizen believes the state RQ for chemicals and solvents with federal RQs of 5,000 pounds should be 1,000 pounds because they have volatile, flammable, and toxic characteristics. The citizen further believes that the commission should establish a 100 lb RQ for 1,3 butadiene even though there is not a federal RQ for this substance. The commenter contends that research has shown it is one of the most frequently spilled substances in Texas, and it is flammable, toxic, and volatile. The commission notes that the RQ for 1,3 butadiene is 100 lbs for a spill into water if it is another substance. Like any flammable material, it would be tested to determine if it is a characteristically hazardous substance. Those substances have a 100 lb RQ for spills to land and water. For purposes of clarity and consistency, the rules do not amend the table of federal RQs for hazardous substances, except as previously noted for spills to water. As with any technical standard though, the commission will review the effectiveness of the RQs and will strive to ensure that they are protective of human health and the environment. This could result in future amendments to the RQs as they appear in this version of the spill rules.

The proposed rule spelled out "Code of Federal Regulations." Although no comment was received on this issue, the commission notes that "Code of Federal Regulations" has already been referenced previously in the rule; therefore, only the initials "CFR" are required in §327.4(a)(1).

Regarding §327.4(a)(2), Eastman Chemical, Amoco, TCC, DuPont, SMQI, Exxon, Red Star, and Occidental Chemical stated that RQs for spills to water should be the same as the federal RQs. They note that EPA performed a risk study with all possible exposure pathways to determine the RQs for each hazardous substance, and believe that the commission has not provided technical data to support its position. The commission considers the 100 lb. RQ for spills to water to be appropriate because discharges directly to waters of the state present a greater likelihood for negative impacts to human health. The 100 pound RQ is believed to strike an appropriate balance between the competing concerns of avoiding unnecessary over reporting of spills, and allowing the commission the opportunity to know about, and therefore track cleanup of, larger discharges that are more likely to impact human health and the environment. The commission also considers the 100 lb. RQ to be in compliance with the Texas Water Code, Chapter 26. The commission retains the §327.4(a) (2) as proposed.

The commission received several comments concerning §327.4(b) which addresses spills or discharges of oil. GLO requested the inclusion of the RQ for used oil. The commission agrees with this comment and has changed subsection (b) in the final rule to include the RQ for used oil.

Specifically regarding proposed §327.4(b)(1), RQs for spills of oil to land, Amoco commented that the five-barrel spill reporting requirement

for oil is beyond federal requirements, and requested that it be deleted from the rule. Howell, Linfor commented that the five-barrel reporting requirement should be limited to crude oil to be consistent with the Texas Railroad Commission. In order to maintain interagency consistency, Howell, Linfor recommends the RQ for oil and refined petroleum product should have a 25-gallon RQ. They note the 25-gallon RQ is well established in the state program for underground storage tanks and aboveground storage tanks (ASTs). GLO submitted a comment that the RQ for oil should be lowered to one barrel (42 gallons) for oil spills onto land. The commission responds to these comments by amending the proposed rule. First, the final rule differentiates between crude oil, petroleum product, oil other than that defined as petroleum product, and used oil. The definition of petroleum product has been added to the final rule as it is defined in 30 TAC §334.122, "Definitions for ASTs," and is limited to propulsion fuels. Concerning the specific RQs, the commission retains a 210-gallon (five-barrel) reporting requirement for crude oil and oil other than that defined as petroleum product. The commission considers this to be consistent with the 210 gallon reporting requirement for crude oil under the Texas Railroad Commission rule and protective of human health and the environment. The commission has clarified that five barrels is intended to be 210 gallons, by specifically stating in the final rule that the RQ is 210 gallons.

Regarding spills of petroleum product, the commission agrees that consistency within the agency is important and recognizes that a lower RQ is necessary in some cases because petroleum product is more toxic and flammable. However, the commission also recognizes that certain facilities are equipped to handle spills and discharges of petroleum product in quantities greater than 25 gallons. In the final rule, the 210-gallon RQ for petroleum product and used oil applies to those facilities that are exempted from the AST rules under §§334.123(a)(9), 334.123(b), and 334.124(a)(4). Specifically those facilities are electric service facilities including generation, transmission, distribution equipment and transformers; petrochemical plants; petroleum refineries; bulk loading facilities; and certain pipeline facilities, which are collectively referred to as PST exempted facilities in the rule. The commission acknowledges that operators of these facilities have trained staff on hand to respond to spills of petroleum product. The RQ for discharges or spills of used oil and petroleum product from other facilities shall be 25 gallons. Definitions have been added for "PST exempted facilities" and "Pipelines."

Concerning proposed §327.4(b)(2), relating to the RQ for spills of oil to water, UT and BEC oppose the "sheen" test and requested a specific RQ. UT also suggested utilization of the approach adopted by the State of Massachusetts. Under that approach, a spill of oil is not reportable to the state if it is reported to federal officials, a response occurs, the sheen does not persist for more than 24 hours, and the sheen does not recur at the same location within a 30-day period. The commission responds that the sheen test is a recognized national reporting standard that is required under 40 CFR Part 110. With regard to UT's suggestion, the commission is concerned that the Massachusetts approach, which allows 30 days to elapse before the spill has to be reported, is not consistent with the "as soon as possible, but not later than 24 hours" reporting requirement in the Texas Water Code. The final rule retains the sheen test.

Due to the changes discussed in §327.4(b), the structure of the paragraph has been changed. The subsection has been divided into paragraphs (1) and (2). Paragraph (1) lists the RQs for spills of crude oil and oil other than petroleum product or used oil onto land and into water. Paragraph (2) lists the RQs for spills of petroleum product and used oil onto land and into water.

The commission received many comments concerning the proposed RQs for industrial waste and other substances in §327.4(c). Eastman Chemical, Amoco, TCC, DuPont, and Exxon commented that there are no federal RQs for industrial wastes or other substances and promulgating RQs for these substances is going beyond federal requirements. Amoco, TCC, DuPont, and Exxon recommended deleting subsection (c) from the rule. In response, the commission notes that the Texas Water Code, §26.039, includes wastes and other substances in the definition of "Accidental discharge" and "Spill." GLO recommended deleting the reporting requirement only for other substances due to its general and subjective nature. As stated earlier in the preamble, spills or discharges of other substances and industrial waste are required to be reported under the Texas Water Code. Eastman Chemical sug-



gested changing the RQ to 10,000 pounds if the TNRCC insisted on an RQ for these substances. The commission considers 10,000 pounds to be extremely large for spills into water, which is the only media for which it is necessary to report a spill of industrial wastes or other substances. One hundred pounds strikes a reasonable balance between substances that are not likely to cause a pollution incident and substances that could cause serious incidents. Exxon and Occidental Chemical commented that RQs for other substances should be determined on an item-specific basis utilizing a risk assessment. The commission responds that a risk assessment to specify certain "other substances" would be extremely time-consuming and resource intensive. While retaining the general categories of industrial solid waste and other substances, the commission may propose RQs for specific substances in these categories if they present continual or acute health affects or environmental concerns.

Exxon requested that the TNRCC clarify that it is not the intent of the agency to regulate spills of industrial waste or other substances onto land. The commission responds that although the spill rules do not address spills of these substances onto land, the Texas Water Code does address these spills if they cause or may cause pollution. In other words, a spill of industrial waste to land could threaten groundwater and thus be reportable under the Texas Water Code. Occidental Chemical requested that industrial waste be defined as Class 1 industrial waste or municipal hazardous waste and be subject to the RQs set forth in 40 CFR Part 302 to be consistent. The commission notes that any material that appears on Table 302.4 in 40 CFR §302.4 is a hazardous substance and must be reported under §327.4(a). BEC requested the use a volumetric measure rather than a weight measure because it is generally easier for a person to estimate a volumetric measure. In response, the federal RQs for hazardous substances are set forth in pounds, and the commission is attempting to be consistent in establishing units of measure for reporting quantities. However, the agency intends to prepare a guidance document to assist persons in complying with the rules. Toward that end, the guidance document will provide volumetric measurements to the extent practicable. The final rule retains the 100 pound RQ for spills of other substances and industrial waste. As noted earlier, the term "industrial waste" has been changed to "industrial solid waste" in the final rule.

Section 327.5 details the actions required to respond to a spill or discharge. Subsections 327.5(a) and (b) apply to all discharges or spills regardless of whether or not they were reported under §327.3. TXDOT requested confirmation that it has the authority to require a spill cleanup to background levels. The commission responds that as a property owner, TXDOT can request cleanup to background levels. If the RP refuses, TXDOT may use whatever legal means are available to attempt to force the RP to clean up to background. TXDOT also stated that in the case of an extended cleanup where the RP is subject to the Risk Reduction Rules, TXDOT is unwilling to give a responsible party the ability to require deed recordation of state property. In response, this is matter that must be determined between the RP and TXDOT. Under the existing Risk Reduction Rules, the only option to avoid deed recordation is Standard 1, which is background. Occidental Chemical recommended using the terms "response" and "response actions" in place of "cleanup" and "remediation" except when referring to the Risk Reduction Rules. The commission agrees and the final rule reflects these changes. Concerning §327.5(a), GLO commented that the section is entitled "Response Actions," but the language in this subsection states that "Response actions may include.. ." GLO is concerned that the language does not impose any meaningful response requirements, and believes at a minimum, the RP should be required to initiate actions to abate and contain the spill immediately. GLO also believes the rule should require the RP to ensure the arrival on scene of sufficient resources to contain and remove the pollution in a cascading time sequence as required by regulations promulgated under the Oil Pollution Act of 1990. The commission does agree that abating and containing the spill should be the first course of action in every case; therefore, the commission has amended the proposed rule to state that the RP must immediately abate and contain the spill. The remaining six actions are retained as additional measures which shall be undertaken during the response action as appropriate. Subsection (a) also requires that RPs cooperate with the executive director and the local incident command system. The commission notes that the agency may become involved in a spill response even if the spill is not a reportable spill. The agency may find out about such spills through means other than RP notification (ie, non-RP notice, media, etc.).

In subsection (a), Shell recommended adding language that allows the responsible party to refuse to follow a directive of the executive director or the local incident command system if the RP believes such actions could adversely impact the response action. The commission understands Shell's concern but has not amended the rule to incorporate the commenter's recommendation. Such a statement could undermine the agency's authority to conduct oversight of spill responses. Historically, the agency and its predecessors have always worked with RPs, and disagreements over response actions have been settled without problem. It should be noted that under Texas Water Code, §26.266, the agency can take over response to the spill if response actions are deemed inadequate.

Concerning §327.5(a), GLO also wanted clarification of the terms "immediately" and "reasonable response activities" in this subsection. GLO believes immediately should be defined as within one hour. Without definitions, GLO contended that the RP does not have sufficient notice of what actions are expected and the TNRCC has too much discretion in deciding when a person is in compliance with the regulations. In response, the commission points to the statutory basis for the Texas Water Code, §327.5(a) and §26.266(a), which addresses removal of spills or discharges. The statute uses the terms "immediately" and "reasonable actions." Although there is no specific time frame associated with "immediately," the response action should begin upon discovery of the spill. RPs are reminded of the policy stated in the Texas Water Code, §26.262, which states, "It is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay." Concerning clarification of "reasonable response actions," subsection (a) sets forth a menu of reasonable response actions.

Subsection 327.5(c) addresses the requirements for the 30-day follow-up letter or report. Shell wanted the commission to specify the details of the discharge or spill that a TNRCC regional manager will expect to be included in the 30-day letter. The commission responds that the rule requires that the contents of the letter describe the details of the discharge or spill and support the adequacy of the response action. Additional material to be included in the letter or report will depend on the circumstances of each spill and response action. The planned guidance document will contain more detailed guidance for the follow-up letter or report. For interim guidance, reports should provide background information such as the date and time of the spill, the type of material discharged, amount spilled to each media, a map showing the extent of the spill, sites affected by the spill, documentation of TNRCC notification, and details of the response actions and their effectiveness. Other items that could be included are a chronology of the response actions, a list of other agencies notified, weather conditions during the response actions, injuries, amount of waste resulting from the spill, and a report of the EPA and TNRCC waste classification and waste code numbers. If the RP has any doubt about what to include, the RP should request clarification from the State on-scene coordinator or the appropriate regional office.

Concerning proposed §327.5(c), Shell also requested deletion of the requirement in the 30-day follow-up letter that addresses the adequacy of the response action. The commission responds that the 30-day follow-up is necessary to document the actions taken at the site, and it also ensures that appropriate response actions have occurred or are occurring. Vinson & Elkins requested clarification that the 30-day follow-up is required only when the spill was required to be reported under §327.3. It suggested the following language be added in the final rule, "...30 working days of the discovery of a discharge or spill **meeting the notification requirements in §327.3 of this title (relating to Notification Requirements).**" The commission agrees with the intent of the comment, and has amended the proposed language to state that the 30-day follow-up is due within 30 working days of the discovery of a reportable spill or discharge. GLO submitted a comment recommending the subsection be changed to require the report within 30 days after the response action is complete because many response actions are not complete within 30 days. The commission disagrees and retains the 30-day follow-up for the reasons stated earlier. Furthermore, if the response action is not complete, the RP may request an extension as set forth in §327.5(c)(2).

Brown McCarroll commented that cleanups meeting the substantive requirements of Risk Reduction Rule Standard 1 (cleanup to background or clean closure) or Standard 2 (closure to default health-based levels) closure or cleanups approved by the TNRCC regional manager

should satisfy remediation requirements under these rules for cleanups that take place within 180 days after the release or discharge. In response, the RP may use either the Risk Reduction Rules or determine the appropriate response action during the first 180 days after the spill. Based upon Brown McCarroll's comment, the commission understands that this was not clear in the proposed rule, the commission has added language to §327.5(c)(1) in the final rule which states that appropriate response actions at any time following the discharge or spill include use of the Risk Reduction Rules or other appropriate agency risk-based corrective action programs.

Under proposed §327.5(c)(1)-(3) of the rule, the 30-day follow-up letter describes the status of the response action: paragraph (c)(1) requires a statement that the response action is complete; paragraph (c)(2) requires a statement that the response action is not complete and allows the RP to request a 180 day extension; paragraph (c)(3) requires a statement that the response action cannot be completed within the 180-day time frame.

Concerning §327.5(c)(1), BEC commented that the requirement to include the initial report information should be removed because it is unnecessary and counter-productive. The commission disagrees and will retain this requirement because it aids quick review of the follow-up letter, documents the RP's actions, and is not a burdensome requirement.

With regard to proposed §327.5(c)(2), TCC, DuPont, and Occidental Chemical commented that the agency should seriously consider the oversight and control powers and duties it would vest in the executive director and assign the greater authority to the regional managers including the authority to grant the 180-day extension. The commission disagrees and asserts that the authority granted to the executive director is appropriate. The term "executive director" includes agency staff; as such, the regional manager may serve as the executive director's duly appointed representative. The commission has specifically identified the regional manager in specific provisions of the rule because in those instances the commission agrees with the executive director that actions such as this can best be served by delegating these duties to the regional manager. Also regarding §327.5(c)(2), Occidental Chemical stated that there is nothing in the proposed rule which that sets a deadline for a response action to be completed, and it is not clear to what the 180 days is added. Furthermore, the commenter believes the 180-day limit is arbitrary and without basis. The commission responds that each response action is site specific and the time required to adequately complete the response action is dependent upon numerous factors. The commission contends that setting a specific deadline serves no useful purpose. In response to Occidental Chemical's other comments, the 180-day extension is from the date the spill or discharge is reported. The commission agrees that this was not clear in the proposed rule and has clarified this in the final rule. In addition, the final rule replaces "180 days" with "6 months." Concerning the claim that the 180-day limit is arbitrary, the commission responds that the majority of spills or discharges can be cleaned up in six months.

Concerning proposed §327.5(c)(3), TCC and DuPont were concerned that the rules only allow remediation under the Risk Reduction Rules. They requested that the rules also allow remediation under any other risk-based remediation program approved by the commission such as the PST program. The commission agrees with this comment and has changed the rule to allow cleanup under other risk-based programs. In addition, the proposed rules stated that the notice will serve as notification of remediation under the Risk Reduction Rules and "will trigger applicability with those rules." In amending §327.5(c)(3), the commission has determined that it is redundant and, therefore, not necessary to state that the notice will trigger applicability with the risk-based rules. TCC also wanted to know if the Voluntary Cleanup Program is an available option. The Voluntary Cleanup Program is an option; however, RPs should be aware that the release of liability afforded by the program is only for non-RPs. Occidental Chemical requested that the commission strike the term "complete cleanup" used in the proposed rule because it could be interpreted to mean remediating to background. Consistent with its response to a similar comment, the commission agrees and has replaced the term with "response action."

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The purpose of the spill rules is to clarify the reporting requirements in the Texas Water Code,

§26.039, and achieve the policy stated in the Texas Water Code, Texas Hazardous Substances Spill Prevention and Control Act, §26.262, which is to prevent the discharge or spill of hazardous substances into the waters in the state and to cause the removal of discharges or spills without undue delay. The new rule substantially advances this purpose by establishing clear reporting and response action guidelines, which should improve the timeliness, adequacy, coordination, efficiency, and effectiveness of responses to discharges or spills subject to the commission's regulatory jurisdiction. Promulgation and enforcement of these rules could affect private real property that is the subject of the rules.

However, the following exceptions to the application of the Texas Government Code, Chapter 2007, listed in Texas Government Code, §2007.003(b) apply to these rules: The action is taken in response to a real and substantial threat to public health and safety. Spills or discharges of hazardous substances, oil including petroleum product, used oil, industrial solid waste, and other substances can present a real and substantial threat to public health and safety if not adequately responded to in a timely manner. On land such spills can be injurious to humans, animals, plant life, and other ecological receptors. Depending on the substance spilled, this can occur through short-term and long-term exposure. Spills to water can adversely affect humans, animals, aquatic plant and animal life, and other ecological receptors. The action significantly advances the health and safety purpose. The rule significantly advances the health and safety purpose by requiring a responsible person to notify appropriate parties of a discharge or spill. These parties include the agency, owners and residents, and if a spill or discharge creates an imminent health threat, local emergency authorities. The rules also require a responsible party to immediately begin response actions and to cooperate with the agency and the local incident command system. The action imposes no greater burden than is necessary to achieve the health and safety purpose. The new rule establishes very reasonable reporting standards which adequately balance the competing concerns of avoiding unnecessary over reporting with protection of human health and the environment. The rule also provides important flexibility because appropriate response actions at any time following the discharge or spill include use of the Risk Reduction Rules or other appropriate agency risk-based corrective action programs.

The new sections are adopted under the Texas Water Code, §5.103, which provides the TNRCC with the authority to adopt any regulation necessary to carry out its powers and duties under the Texas Water Code and other laws of this state, and the Texas Water Code, §26.264, which provides the commission with the authority to issue rules necessary and convenient to carry out the purposes of the Texas Water Code, Chapter 26, Subchapter G.

These sections are also adopted under the Texas Water Code, §26.039, which authorizes the commission to issue reasonable rules establishing safety and preventive measures concerning activities that are inherently or potentially capable of causing or resulting in the accidental discharge or spillage of waste or other substances and which pose serious or significant threats of pollution, and under the Texas Health and Safety Code, Solid Waste Disposal Act, §361.024, which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste.

#### *§327.1. Applicability.*

(a) This chapter applies to discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of this state.

(b) This chapter does not apply to:

(1) discharges or spills of oil that enter or threaten to enter coastal waters of the State. Except for spills of oil of 240 barrels or less for which the Railroad Commission of Texas is the on-scene coordinator, such discharges or spills are regulated by the Texas General Land Office under the Oil Spill Prevention and Response Act of 1991, the Texas Natural Resources Code, Chapter 40, Subchapters C,D,E,F, and G;

(2) spills or discharges from activities subject to the jurisdiction of the Railroad Commission of Texas under the Texas Water Code, §26.131.

(3) releases only to air;

(4) the lawful placement of waste or accidental discharge of material into a solid waste management unit registered or permitted under Chapter 335, Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General);

(5) units and activities regulated under the authority of the Texas Water Code, Chapter 26, Subchapter I (relating to Underground and Aboveground Storage Tanks);

(6) the lawful application of materials, including but not limited to fertilizers and pesticides, to land or water;

(7) discharges that are authorized by a permit, order, or rule issued under federal law or any other law of the State of Texas; provided, however, that discharges not so authorized shall be reported under this chapter unless the permit, order, or another commission rule provides an applicable reporting requirement; (8) discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency (EPA) under 40 Code of Federal Regulations (CFR) §302.8; and (9) discharges or spills occurring during the normal course of transportation about which carriers are required to give notice and report in accordance with 49 CFR §171.15 and §171.16.

**§327.2. Definitions.** The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

**Agency on-scene coordinator**—The official designated by the executive director to coordinate and direct agency responses, or to oversee private responses to discharges or spills.

**Coastal waters**—The definition of Coastal waters as it appears in Title 31, Texas Administrative Code, §19.2 (relating to Definitions) of the Texas General Land Office rules.

**Discharge or spill**—An act or omission by which oil, hazardous substances, waste, or other substances are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in the State of Texas or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in the State of Texas.

**Emergency response team**—A unit of the agency that is responsible for the coordination of response to spills and discharges under the agency's jurisdiction.

**Environment**—Waters in the state, land surface or subsurface strata, for purposes of this chapter only.

**Facility**—Any structure or building, including contiguous land, or equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any site or area where a discharge or spill has occurred or may occur.

**Hazardous substance**—Any substance designated as such by the administrator of the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675, regulated under the Clean Water Act, §311, 33 U.S.C. 1321, or designated by the commission.

**Industrial solid waste**—Solid waste, as defined in §335.1 of this title (relating to Definitions), resulting from or incidental to any process of industry or manufacturing, or mining, or agricultural operations, which may include hazardous waste as defined in §335.1 of this title.

**Oil**—Oil of any kind or in any form including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include used oil, petroleum product, or oil designated as a hazardous substance in 40 CFR §302.4.

Other substances—Substances that may be useful or valuable and therefore are not ordinarily considered to be waste, but that will cause pollution if discharged into water in the state.

**Petroleum product**—A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including but not necessarily limited to motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

**Petroleum storage tank (PST) exempted facilities**—Electric service facilities including generation, transmission, distribution equipment and transformers; petrochemical plants; petroleum refineries; bulk loading facilities; and pipelines that are exempted from the Aboveground Storage Tank (AST) program under §334.123(a)(9) and §334.123 (b) of this title (relating to Statutory Exemptions for ASTs), and §334.124 (a)(4) of this title (relating to Commission Exclusions for ASTs).

**Pipeline**—A pipeline is:

(A) an interstate pipeline facility, including gathering lines and any aboveground storage tank connected to such facility, if the pipeline facility is regulated under:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code §§1671, et seq); or

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code §§2001, et seq).

(B) an intrastate pipeline facility or any aboveground storage tank connected to such a facility, if the pipeline facility is regulated under one of the following state laws:

(i) the Natural Resources Code, Chapter 111;

(ii) the Natural Resources Code, Chapter 117; or

(iii) Texas Civil Statutes, Article 6053-1 and Article 6053-2.

**Pollution**—The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

**Responsible person**—A person who is:

(A) the owner, operator, or demise charterer of a vessel from which a discharge or spill emanates; or

(B) the owner or operator of a facility from which a discharge or spill emanates; or

(C) any other person who causes, suffers, allows, or permits a discharge or spill.

**Used oil**—Oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

**Vessel**—Every description of watercraft, used or capable of being used as a means of transportation on the water.

**Water or water in the state**—Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks

of all watercourses and bodies of surface waters, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

### *§327.3. Notification Requirements.*

(a) Reportable discharge or spill. A reportable discharge or spill is a discharge or spill of oil, petroleum product, used oil, hazardous substances, industrial solid waste, or other substances into the environment in a quantity equal to or greater than the reportable quantity listed in §327.4 of this title (relating to Reportable Quantities) in any 24-hour period.

(b) Initial notification. Upon the determination that a reportable discharge or spill has occurred, the responsible person shall notify the agency as soon as possible but not later than 24 hours after the discovery of the spill or discharge.

(c) Method of notification. The responsible person shall notify the agency in any reasonable manner including by telephone, in person, or by any other method approved by the agency. In all cases, the initial notification shall provide, to the extent known, the information listed in subsection (d) of this section. Notice provided under this section satisfies the federal requirement to notify the State Emergency Response Commission in the State of Texas. The responsible person shall notify one of the following:

(1) the State Emergency Response Center at 1-800-832-8224;

(2) during normal business hours only, the regional office for the agency region in which the discharge or spill occurred; or

(3) the agency at the agency 24-hour spill reporting number

(d) Information required in initial notification. The initial notification shall provide, to the extent known, the information in the following list. Copies of spill reports prepared for other governmental agencies shall satisfy this requirement if they contain, or are supplemented to contain, all the information required by this subsection. The initial notification shall contain:

(1) the name, address and telephone number of the person making the telephone report;

(2) the date, time, and location of the spill or discharge;

(3) a specific description or identification of the oil, petroleum product, hazardous substances or other substances discharged or spilled;

(4) an estimate of the quantity discharged or spilled;

(5) the duration of the incident;

(6) the name of the surface water or a description of the waters in the state affected or threatened by the discharge or spill;

(7) the source of the discharge or spill;

(8) a description of the extent of actual or potential water pollution or harmful impacts to the environment and an identification of any environmentally sensitive areas or natural resources at risk;

(9) if different from paragraph (1) of this subsection, the names, addresses, and telephone numbers of the responsible person and the contact person at the location of the discharge or spill;

(10) a description of any actions that have been taken, are being taken, and will be taken to contain and respond to the discharge or spill;

(11) any known or anticipated health risks;

(12) the identity of any governmental representatives, including local authorities or third parties, responding to the discharge or spill; and

(13) any other information that may be significant to the response action.

(e) Update notification. The responsible person shall notify the agency as soon as possible whenever necessary to provide information that would trigger a change in the response to the spill or discharge.

(f) Correction of records. Notifying the agency that a reportable discharge or spill has occurred shall not be construed as an admission that pollution has occurred. Furthermore, if the responsible person determines, after notification, that a reportable discharge or spill did not occur, the responsible person may send a letter to the agency documenting that determination. If the executive director agrees with that determination, the executive director will note the determination in commission records. If the executive director disagrees with that determination, the executive director will notify the responsible person within 30 days.

(g) Notification of local governmental authorities. If the discharge or spill creates an imminent health threat, the responsible person shall immediately notify and cooperate with local emergency authorities (fire department, fire marshall, law enforcement authority, health authority, or Local Emergency Planning Committee (LEPC), as appropriate). The responsible party will cooperate with the local emergency authority in providing support to implement appropriate notification and response actions. The local emergency authority, as necessary, will implement its emergency management plan, which may include notifying and evacuating affected persons. In the absence of a local emergency authority, the responsible person shall take reasonable measures to notify potentially affected persons of the imminent health threat.

(h) Notification to property owner and residents. As soon as possible, but no later than two weeks after discovery of the spill or discharge, the responsible person shall reasonably attempt to notify the owner (if identifiable) or occupant of the property upon which the discharge or spill occurred as well as the occupants of any property that the responsible person reasonably believes is adversely affected.

(i) Additional notification required.

(1) Except as noted in paragraph (2) of this subsection, complying with the notification requirements set forth in this section does not relieve, satisfy, or fulfill any other notification requirements imposed by permit or other local, state, or federal law.

(2) Notice provided under this section satisfies the federal requirement to notify the State Emergency Response Commission in the State of Texas.

(j) Alternative notification plans.

(1) Responsible persons in charge of activities and facilities may submit and implement an alternative notification plan. This alternative notification plan shall comply with the Texas Water Code, §26.039. Responsible persons shall obtain the agency's written approval before implementing any alternative notification plan.

(2) Upon approval of the agency regional manager, responsible persons may provide the initial notification by facsimile to the regional office during normal business hours.

### *§327.4. Reportable Quantities.*

(a) Hazardous substances. The reportable quantities for hazardous substances shall be:

(1) for spills or discharges onto land—the quantity designated as the Final Reportable Quantity (RQ) in Table 302.4 in 40 CFR §302.4; or

(2) for spills or discharges into waters in the state—the quantity designated as the Final RQ in Table 302.4 in 40 CFR §302.4, except where the Final RQ is greater than 100 pounds in which case the RQ shall be 100 pounds.

(b) Oil, petroleum product, and used oil.

(1) The RQ for crude oil and oil other than that defined as petroleum product or used oil shall be:

(A) for spills or discharges onto land—210 gallons (five barrels); or

(B) for spills or discharges directly into water in the state—quantity sufficient to create a sheen.

(2) The RQ for petroleum product and used oil shall be:

(A) except as noted in subparagraph (B) of this paragraph, for spills or discharges onto land—25 gallons;

(B) for spills or discharges to land from PST exempted facilities—210 gallons (five barrels); or

(C) for spills or discharges directly into water in the state—quantity sufficient to create a sheen.

(c) Industrial solid waste or other substances. The RQ for spills or discharges into water in the state shall be 100 pounds.

#### §327.5. *Actions Required.*

(a) The responsible person shall immediately abate and contain the spill or discharge and cooperate fully with the executive director and the local incident command system. The responsible person shall also begin reasonable response actions which may include, but are not limited to, the following actions:

(1) arrival of the responsible person or response personnel hired by the responsible person at the site of the discharge or spill;

(2) initiating efforts to stop the discharge or spill;

(3) minimizing the impact to the public health and the environment;

(4) neutralizing the effects of the incident;

(5) removing the discharged or spilled substances; and

(6) managing the wastes.

(b) Upon request of the local government responders or the executive director, the responsible person shall provide a verbal or written description, or both, of the planned response actions and all actions taken before the local governmental responders or the executive director arrive. When the agency on-scene coordinator requests this information, it is subject to possible additional response action requirements by the executive director. The information will serve as a basis for the executive director to determine the need for:

(1) further response actions by the responsible person;

(2) initiating state funded actions for which the responsible person may be held liable to the maximum extent allowed by law; and

(3) subsequent reports on the response actions.

(c) The responsible person shall submit written information, such as a letter, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate agency regional manager within 30 working days of the discovery of

the reportable discharge or spill. The regional manager has the discretion to extend the deadline. The documentation shall contain one of the following items:

(1) A statement that the discharge or spill response action has been completed and a description of how the response action was conducted. The statement shall include the initial report information required by §327.3(c) of this title (relating to Notification Requirements). The executive director may request additional information. Appropriate response actions at any time following the discharge or spill include use of the Risk Reduction Rules in §335.8 of this title (relating to Closure) or other appropriate agency risk-based corrective action programs.

(2) A request for an extension of time to complete the response action, along with the reasons for the request. The request shall also include a projected work schedule outlining the time required to complete the response action. The executive director may grant an extension up to six months from the date the spill or discharge was reported. Unless otherwise notified by the appropriate regional manager or the Emergency Response Team, the responsible person shall proceed according to the terms of the projected work schedule.

(3) A statement that the discharge or spill response action has not been completed nor is it expected to be completed within the maximum allowable six month extension. The statement shall explain why completion of the response action is not feasible and include a projected work schedule outlining the remaining tasks to complete the response action. This information will also serve as notification that the response actions to the discharge or spill will be conducted under the Risk Reduction Rules in §335.8 of this title (relating to Closure) or other commission risk-based corrective action rules, and shall indicate the appropriate risk-based corrective action program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606089

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Effective date: May 23, 1996

Proposal publication date: November 17, 1995

For further information, please call: (512) 239-6087

## TITLE 34. PUBLIC FINANCE

### Part XI. Fire Fighters' Pension Commission

#### Chapter 301. Rules and Regulations of the Texas Statewide Volunteer Fire Fighters' Retirement Fund

##### • 34 TAC §§301.1-301.10

The Fire Fighters' Pension Commission adopts new §§301.1-301.10, concerning administration of the Texas Statewide Volunteer Fire Fighters' Retirement Fund, without changes to proposed text as published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2629).

The new rules and regulations are being adopted to implement guidelines for administering the pension fund.

The rules and regulations define conditions for participation by member cities based on federal government rules, attorney general's rulings, state board policy and past commissioner decisions.

No comments were received regarding adoption of the new rules and regulations.

The rules and regulations, are adopted under Texas Civil Statutes, Article 6243.e3, (Senate Bill 411), 65th Legislature (1977), and revised in the 72nd Legislature (1991), which provide the Fire Fighters' Pension Commission with the authority to promulgate rules necessary for the administration of the pension fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606104      Helen L. Campbell  
Commissioner  
Fire Fighters' Pension Commission

Effective date: May 24, 1996

Proposal publication date: April 2, 1996

For further information, please call: (512) 462-0222

◆      ◆      ◆  
**TITLE 40. SOCIAL SERVICES AND AS-  
SISTANCE**

**Part VI. Texas Commission for the Deaf  
and Hard of Hearing**

**Chapter 183. Board for Evaluation of  
Interpreters and Interpreter Certification**

**Subchapter E. Fees**

**• 40 TAC §183.573**

The Texas Commission for the Deaf and Hard of Hearing adopts the amendment of §183.573, concerning Fees, with changes to proposed text as published in the March 12, 1996 issue of the *Texas Register* (21 TexReg 2033).

The amendment is adopted to provide an opportunity to recover the cost involved for providing services to interpreter candidates.

A comment was received regarding terminology/grammatical changes which have been incorporated.

The amendment is adopted under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing the authority to adopt rules for administration and programs.

**§183.573. Fees.** The commission shall charge the following fees:  
Certification Fee Schedule Level I Level II Level III Level IV Level V:

- (1) Application-\$20 n/a \$20 \$20 \$20;
- (2) Evaluation-\$75 n/a \$100 \$100 \$100;
- (3) Intermediary Evaluation-n/a n/a \$30 \$30 \$30;
- (4) Annual Renewal/Maintenance-\$25 \$25 \$25 \$25 \$25;
- (5) Late Maintenance-\$50 \$50 \$50 \$50 \$50;
- (6) Reciprocity Application-\$50 \$50 \$50 \$50 n/a;
- (7) Recertification Application-\$50 \$50 \$50 \$50 \$50;
- (8) Re-issuance-\$20 \$20 \$20 \$20 \$20;
- (9) Inactive-\$15 \$15 \$20 \$25 \$25;
- (10) Analysis-\$50 \$65 \$65 \$75 \$75.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606204      David W. Myers  
Executive Director  
Texas Commission for the Deaf and Hard of Hearing

Effective date: May 27, 1996

Proposal publication date: March 12, 1996

For further information, please call: (512) 451-8494

◆      ◆      ◆

# TABLES AND GRAPHICS

---

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1. 34 TAC 129.13 (a)

## QUALIFIED DOMESTIC RELATIONS ORDER

### Texas Municipal Retirement System

This Order is intended to meet the requirements for a "qualified domestic relations order" relating to the TEXAS MUNICIPAL RETIREMENT SYSTEM, hereinafter called the "Plan". This Order is an integral part of the Decree of Divorce signed on (DATE OF DIVORCE DECREE). In compliance with those requirements the following is specified:

1. This qualified domestic relations order assigns a portion of the benefits payable under the Plan to (NAME OF ALTERNATE PAYEE) in recognition of (HIS/HER) marital rights in (NAME OF PARTICIPANT)'s benefits payable under the Plan.

2. Participant in the Plan is (NAME OF PARTICIPANT), whose last known mailing address is (PARTICIPANT'S ADDRESS), whose birth date is (BIRTH DATE), and whose Social Security Number is (NUMBER).

3. Alternate Payee is (NAME OF ALTERNATE PAYEE), whose last known mailing address is (ALTERNATE PAYEE'S ADDRESS), whose birth date is (BIRTH DATE), and whose Social Security Number is (NUMBER). Participant and Alternate Payee became married on (DATE OF MARRIAGE).

4. A portion of any benefit payable with respect to Participant which Participant, or Participant's designated beneficiary, surviving spouse, or estate may become entitled to receive from the Plan, by way of a return of accumulated contributions or by way of any annuity that may become payable as a result of Participant's participation in the Plan is hereby awarded to Alternate Payee, such portion to be determined by multiplying (FRACTION) by the Community Property Ratio based on (select and complete one of the following):

\_\_\_\_ accumulated contributions between the following dates:

\_\_\_\_ and \_\_\_\_.

\_\_\_\_ total creditable service between the following dates:

\_\_\_\_ and \_\_\_\_.

5. The provisions of 34 Texas Administrative Code, §129.13 and §129.14 are incorporated herein by reference.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

---

JUDGE PRESIDING

# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas State Board of Public Accountancy

**Thursday, May 16, 1996, 9:00 a.m.**

333 Guadalupe Street, Tower III, Room 910

Austin

Board Meeting

AGENDA:

Consideration of: Committee Reports from Technical Standards Review, Behavioral Enforcement, Qualifications, Continuing Professional Education, Quality Review, Rules, Licensing, Major Case Rules, Subcommittee on specialization; Adoption of Board Rules, Board Orders, Proposals for Decision; Consultation to seek the advise of the Board's attorney concerning pending or contemplated litigation or a settlement offer (EXECUTIVE SESSION).

**Contact:** J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3900, (512) 505-5542.

**Filed:** May 6, 1996, 3:35 p.m.

TRD-9606253



## State Office of Administrative Hearings

**Thursday, May 16, 1996, 10:00 a.m.**

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A prehearing conference is scheduled for the above date and time in the following docket:

SOAH Docket Number 473-96-0651; PUC Docket Number 15238:

Complaints of Channelview I.S.D. and Seguin I.S.D. against South-

western Bell Telephone

Company for refund of overbillings

**Contact:** J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

**Filed:** May 6, 1996, 1:17 p.m.

TRD-9606236

**Wednesday, July 10, 1996, 9:00 a.m.**

7800 Shoal Creek Boulevard (Rescheduled from June 24, 1996)

Austin

Utility Division

AGENDA:

A hearing on the merits is rescheduled for the above date and time in the following docket:

SOAH Docket Number 473-95-1181; PUC Docket Number 7952:

Complaint of Metro-Link Telecom, Inc. against Southwestern Bell Telephone Company

**Contact:** J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

**Filed:** May 6, 1996, 12:46 p.m.

TRD-9606233

**Monday, July 15, 1996, 9:00 a.m.**

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits will be held at the above date and time in SOAH Docket Number 473-96-0581-application of Deep East Texas Electric Cooperative, Inc. to amend certificate of convenience and



necessity for a proposed transmission line within Nacogdoches County (PUC Docket Number 15322).

**Contact:** J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

**Filed:** May 7, 1996, 2:30 p.m.

TRD-9606313



## **Texas Department on Aging**

**Thursday, May 16, 1996, 10:00 a.m.**

1949 South IH 35, Third Floor Large Conference Room

Austin

Planning Team

AGENDA:

Consider and possibly act on:

Call to order;

Fiscal Year (FY) 1997-2001 strategic plan;

FY 1997-1999 state plan;

Assumptions for FY 1998-1999 Legislative Appropriations request;

Adjourn

**Contact:** Mary Sapp, P.O. Box 12786, Austin, Texas 78701, (512) 444-2727.

**Filed:** May 7, 1996, 11:31 a.m.

TRD-9606292



## **Texas Department of Agriculture**

**Wednesday, May 15, 1996, 8:00 a.m.**

Marriott Rivercenter

San Antonio

Texas Corn Producers Board

Revised Agenda

AGENDA:

Call to order

Action on minutes of February 6, 1996 meeting

Presentation and action: Finance committee recommendations; financial statements; audit procedures; employment agreement; research committee recommendations; C-O-R-N committee recommendations; advertising promotion and education committee recommendations; on proposals presented at committee meetings on May 14, 1996.

Swearing in of new board members

Election of officers

Report: activity report

Discussion: funded research proposal; other business

Discussion and action: setting time and place of next board meeting.

Adjourn

**Contact:** Jerry Don Glover, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

**Filed:** May 6, 1996, 1:18 p.m.

TRD-9606237

**Thursday, May 16, 1996, 10:30 a.m.**

Junction National Bank, 701 Main Street

Junction

Texas Mohair Producers Board

AGENDA:

Opening remarks

Charge to the board and oath of office

Discussion and action: Terms of office; election of officers; setting of rate of assessment and procedure for collection; 1996-1997 budget; selection of bank for deposit of assessments collected and process for disbursement of funds; employment of personnel; reimbursement of election costs; establishment of by-laws; requirements for the board; establishment of advisory committees; scheduling of next meeting.

**Contact:** Duery Menzies, 516 First National Bank Building, San Angelo, Texas 76902, (915) 655-3161.

**Filed:** May 7, 1996, 11:53 a.m.

TRD-9606296



## **Texas Commission on Alcohol and Drug Abuse (TCADA)**

**Thursday, May 16, 1996, 9:00 a.m.**

1009 Caddo, Conference Room, Alcohol and Drug Abuse Council for the Concho Valley

San Angelo

Neds Assessment Ad-Hoc Committee of the Regional Advisory Consortium (RAC), Region 9

AGENDA:

Call to order; selection of chairperson(s); goals 1-4 committee(s); overview of purpose; report(s); and adjournment.

**Contact:** Jose Salas, 6451 Boeing, El Paso, Texas 79925, (915) 783-8660 or Georgia Coman, Executive Director, 1009 Caddo, San Angelo, Texas 76901, (915) 655-3361.

**Filed:** May 6, 1996, 10:28 a.m.

TRD-9606213

**Thursday, May 16, 1996, 11:00 a.m.**

1009 Caddo, Conference Room, Alcohol and Drug Abuse Council for the Concho Valley

San Angelo

Regional Advisory Consortium (RAC), Region 9

AGENDA:

Call to order; comments: convenor and field representative; approval of April 18, 1996 minutes; ad-hoc committee reports (goals 1-4); scheduling of next meeting; and adjournment.

**Contact:** Jose Salas, 6451 Boeing, El Paso, Texas 79925, (915) 783-8660 or Georgia Coman, 1009 Caddo, San Angelo, Texas 76901, (915) 655-3361.

**Filed:** May 6, 1996, 10:28 a.m.

TRD-9606212

**Thursday, May 23, 1996, 1:30 p.m.**

6451 Boeing, Conference Room 47, Texas Department of Human Services

El Paso

Regional Advisory Consortium (RAC), Region 10

AGENDA:

Call to order; comments; convenor and field representative; approval of April 11, 1996 minutes; ad-hoc committee reports: goals 1-4; scheduling of next meeting; and adjournment.

**Contact:** Jose Salas, 6451 Boeing, El Paso, Texas 79925, (915) 783-8660.

**Filed:** May 7, 1996, 8:24 a.m.

TRD-9606269



## **Texas Bond Review Board**

**Tuesday, May 14, 1996, 10:00 a.m.**

Tuesday, May 14, 1996, 10:00 a.m.

300 West 15th Street, Committee Room #5, Clements Building, Fifth Floor

Austin

Planning Session

AGENDA:

I. Call to order

II. Approval of minutes

III. Discussion of proposed issues

A. Texas Public Finance Authority-commercial paper revenue notes for General Services Commission (renovation of State Insurance Building)

B. Texas Commission on Alcohol and Drug Abuse-lease purchase of modular office furniture

C. Texas Department of Criminal Justice-lease purchase of natural gas pipeline for prison facilities in Palestine, Texas

D. Texas Department of Criminal Justice-refinancing of lease purchase for prison facilities in Liberty and Johnson Counties, Texas

E. Texas Department of Criminal Justice-refinancing of lease purchase for prison facilities in Hays and Wise Counties Texas

F. Texas Department of Housing and Community Affairs-Multi-family housing revenue bonds (Harbors and Plumtree Apartments Project) Series 1996 A, B, C, D

G. Texas Department of Housing and Community Affairs-Multi-family housing revenue bonds (Dallas-Fort Worth Apartments Project) Series 1996 A, B, C, D

IV. Other business

A. Discussion of proposed amendments to prior approval for issuance of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes, Series A

B. Discussion of proposed amendments to prior approval for issuance of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Refunding Tax-Exempt Commercial paper Notes, Series B (Non-AMT)

C. Report by Texas Agricultural Finance Authority regarding loan programs

**Contact:** Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

**Filed:** May 6, 1996, 3:40 p.m.

TRD-9606255



## **Children's Trust Fund of Texas Council**

**Friday, May 17, 1996, 1:00 p.m.**

1000 Ballpark Way, Suite 304

Arlington

AGENDA:

Call to order, approve December 1, 1995, minutes

Action to approve agency strategic plan for the period (1997-2001)

Action to further negotiations on the Texas Children's Memorial/Lower Colorado River Authority partnership

Possible action to enter into a contractual agreement with the General Services Commission and the Lower Colorado River Authority to co-locate the Texas Child Abuse Prevention Center and the CTF office with the Friends of the Colorado River Foundation

Action to approve Healthy Steps project funding with the Hogg Foundation

Action to approve Parents and Providers as Partners funding with First Texas Council of Camp fire

Action to approve revised partial per diem policy

Discuss and possibly take action on a motion for approving Shaken Baby Syndrome Proposals

Discuss small state agency audit

Other business

Set next board meeting date

Adjourn

**Contact:** Sue Marshall, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854, (512) 458-1281.

**Contact:** May 7, 1996, 3:33 p.m.

TRD-9606322



## **Comptroller of Public Accounts**

**Monday, May 20, 1996, 2:00 p.m.**

Travis Building, Room 1-100, 1701 North Congress Avenue

Austin

Interagency Task Force on Electronic Benefits Transfer

AGENDA:

This notice announces the third meeting of the Interagency Task Force on Electronic Benefits Transfer, created pursuant to House Bill 1863 (referred to as the Welfare Reform Bill). The Interagency Task Force on Electronic Benefits Transfer is created to advise and assist in adding new benefit programs to the statewide electronic benefits transfer (EBT) system.

I. Discussion of strategic guidelines for EBT use by state agencies

II. Discussion about use of EBT for additional public benefit programs by the members.

III. Comments from the audience



**Contact:** Annette Lovoi, 111 East 17th Street, Room G-27, Austin, Texas 78774, (512) 305-8610.

**Filed:** May 6, 1996, 10:40 a.m.

TRD-9606369

**Wednesday, May 22, 1996, 9:00 a.m.**

2315 Red River, Sid Richardson Hall Basement  
Austin

Public Assistance Fraud Oversight Task Force

AGENDA:

This notice announces the third meeting of the Public Assistance Fraud Oversight Task Force, created pursuant to House Bill 1863 (referred to as the Welfare Reform Bill). The Public Assistance Fraud Oversight Task Force is created to advise and assist the Department of Human Services and its Inspector General in improving the efficiency of fraud investigations and collections.

I. Reports from federal, state, and private sector representatives on current fraud control efforts

II. Comments from the audience

**Contact:** Annette Lovoi, 111 East 17th Street, Room G-27, Austin, Texas 78774, (512) 305-8610.

**Filed:** May 8, 1996, 10:39 a.m.

TRD-9606368

◆ ◆ ◆  
**Texas State Board of Examiners of Professional Counselors**

**Friday, May 17, 1996, 9:00 a.m.**

333 Guadalupe Boulevard, Suite 2-225

Austin

AGENDA:

The board will discuss and possibly act on: approval of the minutes from the April 6, 1996, meeting; motion for rehearing filed by legal counsel for the Complaints Committee and concerning R.H.O.; motion for rehearing filed by legal counsel for R.H.O.; proposal for decision relating to J.M.; board order relating to J.M.; proposal for decision relating to B.B.; and board order relating to B.B.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** May 6, 1996, 11:47 a.m.

TRD-9606230

◆ ◆ ◆  
**Texas Education Agency (TEA)**

**Wednesday, May 15, 1996, 9:00 a.m.**

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE)

AGENDA:

Public testimony, Request for approval of open-enrollment charter school applications.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** May 7, 1996, 12:57 p.m.

TRD-9606299

**Tuesday, May 21, 1996, 8:30 a.m.**

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

Texas Task Force on Educational Technologies

AGENDA:

The following meeting is not subject to the Open Meetings Act: However the agency desires to publicize the event as a courtesy to the public and allow for all interested parties to have opportunity to be informed of the meeting. The task force will review prior work, create working drafts, plan future meetings and identify those issues which seem relevant to the progress of the task force in developing the Long-Range Plan for Technology.

**Contact:** Cynthia Levinson, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9581 or by email at cynthial@tenet.edu.

**Filed:** May 7, 1996, 3:57 p.m.

TRD-9606327

◆ ◆ ◆  
**State Employee Charitable Campaign**

**Thursday, May 16, 1996, 11:00 a.m.**

Texas Capitol Extension E1.012, 14th and Congress

Austin

State Policy Committee

AGENDA:

Discussion/Action items:

1. State Policy Committee member orientation
2. Comptroller's Rules update
3. State Advisory Committee Report
4. State Campaign Manager report of the following:

Budget Update

Final Results from 1995 state campaign

NEADS Application review

Local employee committee chair appointments

Leadership Team report

Materials Team report: Approval of 1996 Generic Campaign Materials

Budget Subcommittee report: Approval of SECC Travel Policy and Local Budget Policy

5. State Policy Committee Chairman's report

6. Local Charitable Organization Appeals

7. Set next meeting date and agenda

**Contact:** Mary Ellen Burns, 505 East Huntland Drive Suite 455, Austin, Texas 78752, (512) 450-0840, Fax: (512) 450-0108.

**Filed:** May 8, 1996, 7:59 a.m.

TRD-9606338

## **Texas Energy Coordination Council**

**Thursday, May 16, 1996, at 1:00 p.m.**

Capitol Extension, 1200 Congress Avenue, Room E1.016

Austin

AGENDA:

1:00 p.m. Mike Roberts, Chairman

I. Call to Order

II. Approval of Minutes

III. Introduction

-Council Members

-Executive Director

-Guests

IV. Attorney General Instructions

V. Discussion of Policy Issues

VI. Institute Reports

-ESTI

-TBEI

VII. TECC Budget

-ESTI Proposed Budget

-TBEI Proposed Budget

-Vaughn Nelson Contract

VII. Other Business/Public Comment

-TECC Database and Homepage

IX. Next Meeting Date and Site

X. Adjourn

**Contact:** Susan Peterson, 10100 Burnet Road, CES (R7100), Austin, Texas 78758, (512) 475-6774.

**Filed:** May 7, 1996, 2:37 p.m.

TRD-9606316

## **Office of the Governor-Criminal Justice Division**

**Thursday, May 16, 1996, 10:00 a.m.**

The Capitol Extension Building, House Appropriations Committee Room, E1.030, 1400 North Congress

Austin

Governor's Juvenile Justice Task Force

AGENDA:

I. Call to order

II. Approval of minutes

III. Recommendations from committee chairs

IV. Other Business

V. Upon adjournment-Subcommittees to meet in the following Capitol Extension rooms

A. Fine-Tuning Codes E2.018

B. Implementation E2.020

C. Legislation/Appropriations E1.030

D. Resources E2.022

E. Strategy E2.024

**Contact:** Chad Bienko, P.O. Box 12428, Austin, Texas 78711, (512) 463-1924.

**Filed:** May 7, 1996, 2:28 p.m.

TRD-9606311

## **Texas Health and Human Services Commission**

**Tuesday, May 21, 1996, 2:00 p.m.**

Midwestern State University, Ball Room, 3400 Taft Boulevard

Wichita Falls

AGENDA:

The purpose of these hearings is to seek public participation on the development of the Medicaid managed care program. We are seeking comments on ways to develop a health care delivery system that will best meet the needs of the Medicaid clients. This program will be developed under the current authority of the 1915(b) freedom of choice waivers. Comments will also be taken on the long term care integrated managed care model where the Legislature has requested that the Texas Health and Human Services Commission develop a pilot to integrate acute and long term care services into one delivery system.

Please send written comments to the Texas Health and Human Services Commission (HHSC) P.O.Box 13247, Austin, Texas 78711. Persons with disabilities who may require special needs may contact Colleen Paige at HHSC in Austin at (512) 424-6517 (Voice or TDD).

**Contact:** Colleen Paige, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-6517.

**Filed:** May 7, 1996, 2:30 p.m.

TRD-9606314

## **Texas House of Representatives**

**Thursday, May 30, 1996, 10:00 a.m.**

Capitol Extension, 15th and Congress Avenue, Room E1.030

Austin

House Committee on Appropriations Subcommittee on Public Safety, Criminal Justice and Judiciary

AGENDA:

I. Call to Order

II. Roll Call

III. New Business

IV. Old Business

V. Adjournment

**Contact:** Janis Carter, P.O. Box 2910, Austin, Texas 78703, (512) 463-1091.

**Filed:** May 7, 1996, 8:28 a.m.

TRD-9606271

## **Texas Department of Housing and Community Affairs**

**Wednesday, May 15, 1996, 11:00 a.m.**

Capitol Extension, 1400 Congress Avenue, Room E1.018

Austin

Low Income Housing Tax Credit Committee Meeting

Revised Agenda:

AGENDA:

Please note the meeting date was mistakenly posted for May 12, 1996. The agenda has not changed and the correct date is May 15, 1996 beginning at 11:00 a.m.

**Contact:** L. P. Manley, 507 Sabine, #900, Austin, Texas 78701, (512) 475-3934.

**Filed:** May 7, 1996, 3:20 p.m.

TRD-9606320

## **Texas Department of Human Services**

**Wednesday, May 15, 1996, 1:30 p.m.**

701 West 51st Street, 5th Floor, Room 560

Austin

Services to Persons with Disabilities Subcommittee

Revised Agenda:

AGENDA:

1. Welcome and instructions. 2. Public comment. 3. Approval of minutes. 4. Announcements from SSPD members. 5. TDHS Board Items. -Strategic Plan 1997-2001 draft -Status Report on Affirmative Action Plan. 6. ADAC Agenda update. 7. Texas Department of Insurance. -Disability/HMO Roundtable. -"Helping Texans with Disabilities Understand Health Coverages and Alternatives" Conference. 8. Public/Private Partnership update. 9. HHSC Client Transportation Workgroup. 10. SSPD -New Membership for Fiscal Year 1997. 11. Client's Rights Workgroup. 12. Next Meeting. 13. Adjournment.

**Contact:** D. J. Johnson, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3533.

**Filed:** May 7, 1996, 2:11 p.m.

TRD-9606308

## **Texas Incentive and Productivity Commission**

**Thursday, May 16, 1996, 1:00 p.m.**

Clements Building, 15th and Lavaca, Room 406, Conference Room of State Pension Review Board

Austin

Revised Agenda:

AGENDA:

Please note that the agenda has not changed by the date of the commission meeting was previously printed incorrectly.

**Contact:** M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

**Filed:** May 7, 1996, 4:55 p.m.

TRD-9606336

## **Texas Department of Information**

**Wednesday, May 15, 1996, 7:00 p.m.**

2602 Live Oak

San Angelo

Board

AGENDA:

No formal action will be taken during this meeting, and no formal agenda will be prepared. The Board may discuss one or more issues within the jurisdiction of the Board, however, specifically including the West Texas Disaster Recovery and Operations Center (WTDROC). The Board will conduct an open meeting again on Thursday, May 16, 1996, at 9:00 a.m. on the campus of Angelo State University to receive an update on the WTDROC and to consider other matters; the agenda for the meeting is posted separately.

**Contact:** Yvonne Montgomery, 300 West 15th Street, Suite 1300, Austin, Texas 78701, (512) 475-1715.

**Filed:** May 6, 1996, 4:27 p.m.

TRD-9606261

**May 16, 1996, at 9:00 a.m.**

Angelo State University, Houston Harte University Center Conference Center Room

San Angelo

Board

AGENDA:

Adoption of Minutes, update on West Texas Disaster Recovery and Operation Center (tour of the facility), Consideration and possible publication of proposed amendment to rule 1 TAC §201.13 addressing the Year 2000, Briefing on information provided to the legislature, Executive Director's report, Other Business.

NOTE:

Interested parties who do not wish to travel to the designated meeting location in San Angelo, Texas may attend via a live, two-way video-conference located in Committee Room #5, 5th Floor, William P. Clements Building, 300 West 15th Street, Austin, Texas 78701.

**Contact:** Yvonne Montgomery, 300 West 15th Street, Suite 1300, Austin, Texas 78701, (512) 475-1715.

**Filed:** May 6, 1996, 4:27 p.m.

TRD-9606260

## **Board of Law Examiners**

**Friday, May 17, 1996, beginning at 8:30 a.m. and continuing until business is completed.**

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Hearings Panel

AGENDA:

The hearings panel will hold public hearings and conduct deliberations, including the consideration of proposed agreed order, on the character and fitness of the following applicants and/or declarants:

James B. Allen; Michael J. Ryan; Daniel B. Ross; Mark A. Sanchez; Amy S. Inman, Ronald A. Stearns. (Character and fitness deliberations may be conducted in executive session, pursuant to §82.003(a), Texas Government Code).

**Contact:** Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

**Filed:** May 6, 1996, 3:39 p.m.

TRD-9606254

◆ ◆ ◆  
**Texas State Library and Archives Commission**

**Friday, May 17, 1996, 10:00 a.m.**

1201 Brazos, Room 314, Lorenzo de Zavala, State Library and Archives Building

Austin

Library Systems Act Advisory Board

AGENDA:

1. Review and Approval of SFY 1997 Library Systems' Plans of Service.
2. Information Items:
  - a. Status Report on Library Development Division's 1998-1999 Biennial Budget Request
  - b. Status Report on Library Systems' 1998-1999 Biennial Budget Request
  - c. Status Report on federal funding
  - d. Status Report on Internal Audit report of library system
  - e. Demonstration of State Library Web pages
3. Discussion of Library Systems and other projects related to Texas libraries.

**Contact:** Edwards Seidenberg, P.O. Box 12927, Austin, Texas 78711-2927, (512) 463-5459.

**Filed:** April 30, 1996, 8:41 a.m.

TRD-9605927

◆ ◆ ◆  
**Texas State Board of Medical Examiners Hearings Division**

**Thursday, May 16, 1996, 8:30 a.m.**

333 Guadalupe Boulevard, Tower 3, Suite 610

Austin

AGENDA:

Modification Request, 8:30 a.m. -Jack Berndt, MD, Tucson, AZ. Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), §2.09(o), Texas Revised Civil Statutes, regarding pending or contemplated litigation.

**Contact:** Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016, FAX: (512) 305-7008.

**Filed:** May 6, 1996, 12:46 p.m.

TRD-9606232

**Midwestern State University**

**Friday, May 10, 1996, 9:00 a.m.**

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

AGENDA:

The Board of Regents will consider the minutes of the February 9, 1996 and February 28, 1996, Board of Regents meetings and review the financial reports for the months ending January, February, and March 1996. The Board will consider recommendations and receive information from the Executive, Finance and Audit, Personnel and Curriculum, Student Services, University Development and Athletics Committees. A report will be presented from the president of the university. The Board of Regents of Midwestern State University reserves the right to discuss any items in Executive Session whenever legally justified and properly posted in accordance with the Texas Government Code, Chapter 551.

**Contact:** Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

**Filed:** May 6, 1996, 12:29 p.m.

TRD-9606231

◆ ◆ ◆  
**Texas Natural Resource Conservation Commission**

**Thursday, May 23, 1996, 2:00 p.m.**

TNRCC Park 35 Office Complex, Building F, Room 2210, 12100 North IH-35

Austin

Texas Groundwater Protection Committee

AGENDA:

The Texas Groundwater Protection Committee will meet to discuss: subcommittee reports from Agricultural Chemicals, Data Management and Nonpoint Source; presentation from Voluntary Clean Up Program (TNRCC); discuss of Committee Report to the 75th Legislature, and set future meeting dates; status update on CSGWPP Development, Abandoned Well Plugging Educational Initiative, Annual Groundwater Monitoring and Contamination Report Preparation, Draft Texas Ground-Water Programs Directory, update on SMP; Announcements; and Public Comment.

**Contact:** Mary Ambrose, P.O. Box 13087, Austin, Texas 78701, (512) 239-4800.

**Filed:** May 6, 1996, 3:27 p.m.

TRD-9606252

◆ ◆ ◆  
**Texas Pension Review Board**

**Thursday, May 16, 1996, 1:00 p.m.**

Teacher Retirement System Building, Fourth Floor-Room 420, 1000 Red River Street

Austin

Database Project Subcommittee

AGENDA:

1. Call to order

2. Introduction of members and organization of committee
3. Discussion of committee charges
4. Discussion of PRB Appropriation Rider
5. Overview of Texas Association of Public Employee Retirement System (TEXPERS) database proposal of December 14, 1994
6. PRB Staff Report
  - a) Overview of PRB Reporting Requirements
  - b) Overview of Current PRB Database
  - c) Overview of Existing PRB Online Services
  - d) Recommendations
7. Establish committee work schedule and determine work product
8. Public testimony
9. Discussion and possible adoption of committee work product
10. Adjournment

**Contact:** Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

**Filed:** May 6, 1996, 4:12 p.m.

TRD-9606257



## **Texas Board of Physical Therapy Examiners**

**Saturday, May 18, 1996, 10:00 a.m.**

333 Guadalupe Boulevard, Suite 2-510

Austin

Investigations Committee

Rescheduled From: March 2, 1996

AGENDA:

- I. Call to order
- II. Review and possible action regarding the following cases 96127, 96002, 96051, 96101, 96106, 96120, 96124, 96125, 96138, 96116, 96017, 96143, 96075, 96037, 96040
- III. Informal conferences for A. Weiner, Flor Hays and D. Montecillo
- IV. Discussion of registered disciplinary actions
- V. Adjourn

**Contact:** Gerard Swain, 333 Guadalupe Boulevard, Suite 2-510, Austin, Texas 78701, (512) 305-6900.

**Filed:** May 8, 1996, 11:37 p.m.

TRD-9606372



## **Public Utility Commission of Texas**

**Friday, May 24, 1996, 9:00 a.m.**

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15810-Application of Masters Financial Services for a Service Provider Certificate of Operating Authority. This application was filed on May 3, 1996.

Applicant will contract with Southwestern Bell to offer non-switching telephone service only. The company will strictly be a resaler. Southwestern Bell will provide all technical support. The proposed service area is the entire State of Texas. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by May 17, 1996.

**Contact:** Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 6, 1996, 1:16 p.m.

TRD-9606234

**Friday, May 24, 1996, 9:00 a.m.**

Friday, May 24, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15809-Application of North American In Telecom, Inc. for a Service Provider Certificate of Operating Authority. This application was filed on May 3, 1996. Applicant will provide affordable business and residential local exchange service. NAI will not operate in any area where the incumbent LEC, along with any affiliates, serves less than 31,000 access lines. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by May 17, 1996.

**Contact:** Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** May 6, 1996, 1:17 p.m.

TRD-9606235



## **Texas Low-Level Radioactive Waste Disposal Authority**

**Thursday, May 9, 1996, 8:30 a.m.**

Stephen F. Austin, Building, Room 118, 17th and Congress Avenue  
Austin

Board of Directors

Emergency Revised Agenda:

AGENDA:

VI.G. Emergency adoption of 31 TAC §449.91-449.93 (Subchapter H) relating to training and education for employees

Reason for emergency: Recently, amendments to the state Employees Training Act were adoption which require agencies to adopt rules relating to employee eligibility and obligations for education and training.

The Amendments state that no public moneys shall be paid for these purposes unless the rules are in effect. To avoid any enforcement of this directive that would make these funds unavailable, the staff proposes that the rule be adopted on an emergency basis.

**Contact:** Lawrence R. Jacobi, Jr., P.E., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

**Filed:** May 6, 1996, 2:00 p.m.

TRD-9606241



## Texas Savings and Loan Department

**Wednesday, May 22, 1996, 9:00 a.m.**

Finance Commission Building, 2601 North Lamar Boulevard, Third Floor

Austin

AGENDA:

The purpose of this meeting (hearing is to accumulate a record of evidence in regard to the application of Coastal Banc ssb, Houston, Texas to relocate the branch office at 9712 Fondren to the 5300 block of North Braeswood, Houston, Harris County, Texas, which facilitated the application subject to this notice.

**Contact:** Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

**Filed:** May 7, 1996, 8:42 a.m.

TRD-9606272



## Texas Senate

**Friday, June 7, 1996, 9:00 a.m.**

1500 Marilla, City Council Chamber

Dallas

Intergovernmental Relations

AGENDA:

The Intergovernmental Relations Committee will take public testimony in the following order:

Charge II-Urban infrastructure

Charge I-City/county consolidation

**Contact:** Amy Kelly, P.O. Box 12068, Austin, Texas 78711, (512) 463-0385.

**Filed:** May 7, 1996, 9:36 a.m.

TRD-9606280



## Telecommunications Infrastructure Fund Board

**Wednesday, May 15, 1996, 1:30 p.m.**

1400 Congress Avenue, Capitol Extension, Room E2.036

Austin

AGENDA:

I. Call to order open meeting/quorum call-chairman Carolyn Bacon

II. Approve minutes from prior meetings.

III. Presentation by Texas Association of School Administrators

IV. Invited testimony

V. Adjourn meeting

**Contact:** Jim Glotfelty or Danner Bethel, P.O. Box 12428, Austin, Texas 78701, (512) 936-8432.

**Filed:** May 7, 1996, 4:59 p.m.

TRD-9606337



## Texas State Technical College System

**Saturday, May 11, 1996, 9:00 a.m.**

305 Booker, Building 1 Meeting A&B

Brownwood

Board of Regents

Revised Agenda

AGENDA:

Add Items:

Attributes desired in new chancellor

Recommendations for search committee

**Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.**

**Filed:** May 7, 1996, 4:03 p.m.

TRD-9606328

**Saturday, May 11, 1996, 9:15 a.m.**

Texas State Technical College Brownwood Extension Center, 305 Booker, Building 1 Meeting A&B

Brownwood

Board of Regents (Closed Meeting)

Revised Agenda

AGENDA:

Add Items:

Following Item VII of the agenda and shown as Item VIII the Board of Regents will recess from open meeting into Closed Meeting in accordance with Chapter 551 of the Texas Government Code for the specific purpose provided in §§551.071, 551.072, 551.074, and 551.075 and will discuss the following:

Asbestos litigation

Report and discussion of Panhandle Rental Properties in Amarillo

**Contact:** Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

**Filed:** May 7, 1996, 3:12 p.m.

TRD-9606319



## The Texas State University System

**Tuesday, June 4, 1996, 10:00 a.m.**

First Floor Conference room, Houston Harte Student Center, Angelo State University

San Angelo

Board of Regents

Revised Agenda

AGENDA:

Review of matters of the Board, the System and the Universities in the System including: award of construction contracts; review of amendments to the System Rules and Regulations and consideration and discussion of all matters and candidates relating to the employment of a president for Sam Houston State University, including the only candidate recommended by the Presidential Selection Advisory Committee. Dr. Bobby K. Marks. (Where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects. )



**Contact:** Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

**Filed:** May 7, 1996, 8:58 a.m.

TRD-9606273

◆ ◆ ◆  
**Texas Department of Transportation**

**Thursday, May 16, 1996, 9:00 a.m.**

410 East Fifth Street, Second Floor

Austin

Motor Vehicle Board

AGENDA:

Call to order; roll call. Approval of minutes of Motor Vehicle Board Meeting on April 11, 1996. Report on Rule 103.13. Discussion of license purveyors. Argument on Proposals for Decision. Consideration of Proposals for Decision. Consideration of Agreed Final Orders. Orders of Dismissal. Other: a. Litigation Status Report; b. Review of Consumer Complaint Recap Report including decisions made by examiners, division director and Board members; c. Division budget status. Adjournment.

**Contact:** Brett Bray, 410 East Fifth Street, First Floor, Austin, Texas 78701, (512) 505-5100.

**Filed:** May 8, 1996, 11:50 a.m.

TRD-9606373

◆ ◆ ◆  
**Board of Lease of University Lands**

**Tuesday, May 14, 1996, 10:00 a.m.**

Center for Energy and Economic Diversification, 1400 North FM 1788

Midland

AGENDA:

1. Approval of the minutes of the November 14, 1995, board for lease meeting.
2. Approval of tracts offered and opening of bids received on or before 10:00 a.m., Tuesday, May 14, 1996, for Regular Oil and Gas Lease Sale Number 89.
3. Approval of tracts offered and opening of bids received on or before 10:00 a.m., Tuesday, May 14, 1996, for Frontier Oil and Gas Lease Sale Number 89-A.
4. Lease procedures and terms for Regular Oil and Gas Lease Sale Number 90 and Frontier Oil and Gas Lease Sale Number 90-A.
5. Oil royalty take in-kind program.
6. Gas royalty take in-kind program.
7. Animal reporting and royalty payments.
8. Board for Lease Meetings; location and time.
9. Approval of lease awards to highest bidders for Regular Oil and Gas Lease Sale Number 89.
10. Approval of lease awards to highest bidders for Frontier Oil and Gas Lease Sale Number 89-A.

Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services may contact Loretta Loyd at (512) 499-4462 at least two work days prior to the meeting date so

that appropriate arrangements can be made.

**Contact:** Mary Burke, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4462.

**Filed:** May 6, 1996, 3:27 p.m.

TRD-9606251

◆ ◆ ◆  
**Texas Water Development Board**

**Wednesday, May 15, 1996, 3:00 p.m.**

Stephen F. Austin Building, Room 513F, 1700 North Congress Avenue

Austin

Finance Committee

AGENDA:

1. Consider approval of the minutes of the meeting of April 17, 1996.
2. Quarterly briefing on investments.
3. Consider a grant/loan to the Town of Combes (Cameron County) for the design and construction of water and wastewater system improvements (Economically Distressed Areas Program).
4. Consider a grant/loan to Siesta Shores Water Control and Improvement District (Zapata County) for the construction of water system improvements (Economically Distressed Areas Program).
5. Briefing on present and future EDAP projects.
6. Report on the status of approved contracts.
7. May consider items on the agenda of the May 16, 1996 Board meeting.

\* Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

**Contact:** Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

**Filed:** May 7, 1996, 2:28 p.m.

TRD-9606312

**Wednesday, May 15, 1996, 4:00 p.m.**

Stephen F. Austin Building, Room 513-F, 1700 North Congress Avenue

Austin

Audit Committee

AGENDA:

1. Consider approval of the minutes of the meeting of January 17, 1996.
2. Briefing and discussion on general accounting items.
3. Briefing and discussion on current audit activities of the Internal Auditor.
4. Briefing and discussion on external audit activities of the Development Fund Audit Section.
5. May discuss items on the agenda of the May 16, 1996 Board meeting.

\* Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

**Contact:** Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

**Filed:** May 7, 1996, 2:59 p.m.

TRD-9606317

◆ ◆ ◆  
**Texas Workforce Commission**

**Tuesday, May 14, 1996, 9:00 a.m.**

Room 644, TEC Building, 101 East 15th Street  
Austin

**AGENDA:**

Prior meeting notes; staff reports; discussion, consideration and possible action on policy decision for the use of One-Stop Career Center grant funds; Discussion, consideration and possible action on ten percent rule for board membership; Discussion, consideration and possible action with regard to transfer of programs pursuant to House Bill 1863; Discussion, consideration and possible action with regard to submitted applications for certification of various local workforce development boards; Internal procedures of Commission Appeals; Consideration and action on higher level appeals in unemployment compensation cases listed on Texas Employment Commission Docket 20; and Set date and discuss agenda for next meeting.

**Contact:** C. Kingsbery Otto, 101 East 15th Street, Austin, Texas 78778, (512) 475-1119.

**Filed:** May 6, 1996, 4:00 p.m.

TRD-9606256

◆ ◆ ◆  
**Texas Youth Commission**

**Wednesday, May 15, 1996, 2:00 p.m.**

Second Avenue and 45th Street

Corsicana

Board Audit Committee

**AGENDA:**

Introduction of new audit staff-Colleen Waring

Approval of Committee minutes of March 7, 1996

May 1996 Six-Month Follow-up report Status of Implementation of Prior Audit Recommendations-Colleen Waring

Status of Current Internal Audit Department Work Plan-Colleen Waring

Status of State Auditor's Office Projects Related to TYC-Colleen Waring

SAO Audit of TYC Performance Measures

SAO Audit of State Agency Internal Audit Department Effectiveness

Internal Audit Department FY 1998-1999 budget objectives-Colleen Waring

**Contact:** Steve Robinson, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765, (512) 483-5001.

**Filed:** May 7, 1996, 9:28 a.m.

TRD-9606277

**Wednesday, May 15, 1996, 2:00 p.m.**

Second Avenue and 45th Street

Corsicana

Board Audit Charitable Trusts Committee

**AGENDA:**

Approval of minutes of the April 10, 1996 committee meeting

Status report on recommendations-Neil Nichols

Approval of investment plan and strategy and appointment of investment officer-Neil Nichols

Request for additional fund distribution-Chester Clay

**Contact:** Steve Robinson, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765, (512) 483-5001.

**Filed:** May 7, 1996, 9:27 a.m.

TRD-9606276

**Wednesday, May 15, 1996, 2:00 p.m.**

Second Avenue and 45th Street

Corsicana

Board Budget Committee

**AGENDA:**

Approval of the April 10, 1996 committee meeting minutes

Coordinated strategic plan-Chuck Jeffords

TYC strategic plan-Chuck Jeffords

Preliminary Legislative appropriation request-John Franks

**Contact:** Steve Robinson, 4900 North Lamar Boulevard, Austin, Texas 78765, (512) 483-5001.

**Filed:** May 7, 1996, 9:27 a.m.

TRD-9606275

**Wednesday, May 15, 1996, 3:00 p.m.**

Second Avenue and 45th Street

Corsicana

Board Construction Committee

**AGENDA:**

Approval of meeting minutes of April 10, 1996

FY 1994-1995 construction program update

FY 1996-1997 construction program update

Board item

A. Request for funding through the Texas Public Finance Authority

**Contact:** Steve Robinson, 4900 North Lamar Boulevard, Austin, Texas 78765, (512) 483-5001.

**Filed:** May 7, 1996, 9:28 a.m.

TRD-9606278

**Thursday, May 16, 1996, 9:00 a.m.**

Second Avenue and 45th Street

Corsicana

Board

**AGENDA:**

Approval of transfer and of interagency contract for conversion of the J. W. Hamilton unit in Bryan (Action)

Approval of the coordinated strategic plan between the Texas Juvenile Probation Commission and the Texas Youth Commission (Action)

Approval of the Texas Youth Commission's Agency strategic plan (Action)

Approval of Trust Expenditure; Trust Investment Plan and Strategy; and Investment Office Appointment (Action)

Approval of renewal of grant to fund the appointment of counsel for indigent parolees (Action)

TYC/TJPC Joint Board Subcommittee Update (Information)

Report on implementation status regarding prior audit recommendations (Information)

**Contact:** Steve Robinson, 4900 North Lamar Boulevard, Austin, Texas 78765, (512) 483-5001.

**Filed:** May 7, 1996, 9:29 a.m.

TRD-9606279



## Regional Meetings

### Meeting Filed on May 6, 1996

**The Austin-Travis County MHMR Center (Emergency Meeting)** Public Relations Committee met at 1403 Collier Street, Board Room, Austin, May 9, 1996, at Noon. The reason for the emergency: Items requires immediate action prior to the Board Meeting. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9606250.

**The Bexar-Medina-Atascosa Counties Water Control and Improvement District One** met at 221 Highway 132, Natalia, May 10, 1996, at 8:00 a.m. Information may be obtained from John W. Ward, III, Box 170, Atascosa, Texas 78059, (210) 665-2831. TRD-9606258.

**The Colorado County Appraisal District Review Board** ARB met at 400 Spring (County Courtroom), Columbus, May 10, 1996, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9606246.

**The Colorado County Appraisal District** Board of Directors will meet at 400 Spring (County Courtroom), Columbus, May 14, 1996, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9606247.

**The Deep East Texas Private Industry Council Inc.** Planning Worker Adjustment, Monitoring will meet in Room 102, Lufkin City Hall, 300 East Shepherd Street, Lufkin, May 14, 1996, at 1:30 p.m. Information may be obtained from Charlene Meadow, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9606248

**The Deep East Texas Private Industry Council Inc.** will meet in Room 102, Lufkin City Hall, 300 East Shepherd Street, Lufkin, May 14, 1996, at 2:00 p.m. Information may be obtained from Charlene Meadow, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9606249.

**The Falls County Appraisal District** Board of Directors met at the Falls County Courthouse, Interstate and Business 6 and Highway 7, First Floor, Marlin, May 13, 1996, at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661-0430, (817) 883-2543. TRD-9606239.

**The Johnson County Central Appraisal District** Board of Directors will meet at 109 North Main, Suite 201, Room 202, Cleburne, May 16, 1996, at 4: 30 p.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 558-8100. TRD-9606262.

**The South East Texas Regional Planning Commission** Executive Committee will meet at 5900 9th Avenue, Port Arthur, May 15, 1996, at 7:00 p.m. Information may be obtained from Jackie Vice Solis, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9606240.



### Meetings Filed on May 7, 1996

**The Canyon Regional Water Authority** Regular Board Meeting met at the Guadalupe Fire Training Facility, 320 Fire Field Road, New Braunfels, May 13, 1996, at 7:00 p.m. Information may be obtained from Gloria Kaufman, 850 Lakeside Pass Drive, New Braunfels, Texas 78130-9579, (210) 609-0543. TRD-9606286.

**The Cypress Spring Water Supply Corporation** Board of Directors Meeting met at the Office of Cypress Spring Water, Supply Corporation, 4430 Highway 115, South of Mount Vernon, May 14, 1996, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 860-3400. TRD-9606326.

**The Education Service Center, Region XX** Board of Directors met at 1314 Hines Avenue, San Antonio, May 14, 1996, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2471. TRD-9606290.

**The Edwards Aquifer Authority** Board met in the Board Room, San Antonio River Authority, 100 East Guenther, San Antonio, Bexar County, May 11, 1996, at 10:00 a.m. Information may be obtained from Alice Contreras, P.O. Box 15830, San Antonio, Texas 78212, (210) 270-0800. TRD-9603618.

**The Erath County Appraisal District** Board of Directors will meet at 1390 Harbin Drive, Stephenville, May 14, 1996, at 7:00 a.m. Information may be obtained from Vicky Greenough, 1390 Harbin Drive, Stephenville, Texas 76401. (817) 965-5434. TRD-9606323.

**The Falls County Appraisal District** Appraisal Review Board will meet at the Interstate of Highway 6 and 7, Falls County Courthouse, First Floor, Marlin, May 15, 1996, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9606309.

**The Guadalupe-Blanco River Authority** Policy Committee will meet at 933 East Court Street, Seguin, Guadalupe County, May 14, 1996, at 1:00 p.m. Information may be obtained from W. E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (210) 379-5822. TRD-9606287.

**The Guadalupe-Blanco River Authority** Retirement and Benefit Committee will meet at 933 East Court Street, Seguin, Guadalupe County, May 14, 1996, at 2:30 p.m. Information may be obtained from W. E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (210) 379-5822. TRD-9606288.

**The Guadalupe-Blanco River Authority** Board of Directors will meet at 933 East Court Street, Seguin, Guadalupe County, May 15, 1996, at 10: 00 a.m. Information may be obtained from W. E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (210) 379-5822. TRD-9606289.

**The Henderson County Appraisal District** Board of Directors met at 1751 Enterprise Street, Athens, May 14, 1996, at 5:30 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9606295.

**The Heart of Texas Council of Governments** Private Industry Council will meet at 300 Franklin Avenue, Waco, May 16, 1996, at 5:30 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9606293.

**The Heart of Texas Council of Governments** Executive Committee will meet at 300 Franklin Avenue, Waco, May 23, 1996, at 10:00 a.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9606294.

**The High Plains Underground Water Conservation District Number One** Board Meeting met at 2930 Avenue Q, Board Room, Lubbock, May 14, 1996, at 10:00 a.m. Information may be obtained

from A. Wayne Wyatt, 2930 Avenue Q, Lubbock , Texas 79405, (806) 762-0181. TRD-9606324.

**The Hood County Appraisal District** Board of District met at 1902 West Pearl Street, District Office, Granbury, May 14, 1996, at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9606298.

**The Hood County Appraisal District** Appraisal Review Board will meet at 1902 West Pearl Street, District Office, Granbury, May 15, 1996, at 9: 00 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9606297.

**The Red Bluff Water Power Control District** Board of Directors Meeting met at 111 West Second Street, Pecos, May 13, 1996, at 1:00 p.m. Information may be obtained from Jim Ed Miller, 111 West Second Street, Pecos, Texas 79772, (915) 445-2037. TRD-9606300.

**The Rio Grande Council of Governments** Board of Directors' Meeting will meet at 1100 North Stanton, Fourth Floor, El Paso, May 17, 1996, at 1:00 p.m. Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0998. TRD-9606291.

**The Tri County Special Utility District (SUD)** Board of Directors Meeting met at Highway 7 East, Marlin, May 13, 1996, at 8:00 p.m.

Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, (817) 803-3553. TRD-9606270.

**The Wise County Appraisal District** Board of Directors will meet at 206 South State Street, Decatur, May 14, 1996, at 8:00 .m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9606329.



## Meetings Filed May 8, 1996

**The Bexar-Medina-Atascosa Counties Water Control and Improvements District One** met at 226 Highway 132, Natalia, May 13, 1996, at 8:00 a.m. Information may be obtained from John W. Ward, III, P.O. Box 170, Natalia, Texas 78059, (210) 665-2132. TRD-9606339.

**The Brown County Appraisal District** Board of Directors met at 403 Fisk Avenue, Brownwood, May 13, 1996, at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (817) 643-5676. TRD-9606340.

**The North Central Texas Council of Governments** North Central Texas Private Industry Council will meet at 616 Six Flags Drive, Second Floor, Arlington, May 16, 1996, at 10:00 a.m. Information may be obtained from Casandra J. Vines, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9606341.



# IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Department of Agriculture Correction of Error

The Texas Department of Agriculture adopted on an emergency basis, the repeal of §5.154. The rule appeared in the April 23, 1996, issue of the *Texas Register* (21 TexReg 3489).

The effective date should have been reflected as April 11, 1996 with an expiration date of August 10, 1996.

## Texas Department of Agriculture Notice of Public Hearing

The Texas Department of Agriculture (the department) will hold a public hearing to take public comment regarding the department's establishment of emergency quarantine for Karnal bunt as published in the April 23, 1996, issue of the *Texas Register* (21 TexReg 3565).

The hearings will be held Monday, May 20, 1996, at the Texas A&M University Agricultural Research Center, 1380 A&M Circle, El Paso, Texas, beginning at 1:00 p.m.

For more information, please contact Ronald Bertrand, Regional Director, Texas Department of Agriculture, West Texas Regional Office, 4502 Englewood Avenue, Lubbock, Texas 79414, (806) 799-8555.

Issued in Austin, Texas, on May 7, 1996.

TRD-9606330

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture

Filed: May 7, 1996

## Children's Trust Fund of Texas Council

### Correction of Error

The Children's Trust Fund of Texas Council (CTF) submitted a request for proposals, which was published in the April 2, 1996, issue of the *Texas Register* (21 TexReg 2847).

The word "Children's" was misspelled in the agency title.

In the first column the paragraphs number 4-6, should be a-c and in the second column the paragraphs number 7 and 8 should be 4 and 5.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer<sup>(1)</sup>/Agricultural/ Commercial<sup>(2)</sup> thru \$250,000</u>	<u>Commercial<sup>(2)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	05/13/96-05/19/96	18.00%	18.00%

<sup>(1)</sup>Credit for personal, family or household use. <sup>(2)</sup>Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606310

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner

Filed: May 7, 1996

## Texas Education Agency Correction of Errors

The Texas Education Agency (TEA) adopted new §105.1001, concerning optional extended year programs. The rule appeared in the April 30, 1996, issue of the *Texas Register* (21 TexReg 3707).

An error as submitted appeared in the agency response to the first comment listed, which is attributed to the Equity

Center, Grandview ISD, Killeen ISD, and Waskom ISD. The first sentence of the response should read: "The reduction in compensatory education funds is not borne solely by poor district, but by all districts receiving foundation school funds." The second sentence of the response should be deleted. The rest of the response is correct.

An error as submitted also appeared in the agency response to the second comment listed, which is attributed to Weatherford ISD. The response, in its entirety, should be replaced with the following response: "More than 90% of school districts will share equitably in the cost of the extended year set-aside from compensatory education funding. The legislature expressed in statute its priorities for extended year programs and the mechanism for funding those programs."

Three errors as published appeared in the text of adopted new §105.1001. In subsection (b)(2), the word "districts" in the phrase "districts at-risk student population" should contain an apostrophe and read "district's." In subsection (c), the two occurrences of the misspelled word "districts" should contain apostrophes and read "districts."

The Texas Education Agency submitted an open meeting notice for the State Board of Education (SBOE) Committee on Students. The meeting appeared in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3235).

The following item, concerning the University Interscholastic League (UIL), was omitted from the meeting agenda: "Proposed amendments and rule changes to the 1996-1997 UIL constitution and contest rules."

## **Texas Department of Health Notice of Rescission of Order**

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued April 5, 1996, to Corpus Christi Radiology Center, 3554 South Alameda, Corpus Christi, Texas 78411, holder of certification of mammography systems number M00575. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 6, 1996.

TRD-9606238 Susan K. Steeg  
General Counsel  
Office of General Counsel  
Texas Department of Health

Filed: May 6, 1996

## **Health and Human Services Commission Public Notices**

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 95-19, Amendment Number 484.

The amendment revises the plan to implement the disproportionate share hospital (DHS) limitations required by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). Specifically, the amendment revised the Texas Medicaid plan to include the minimum Medicaid inpatient utilization rate qualifying criteria in §1923(d)(3) and to impose the hospital-specific DHS payment limitations in §1923(g) of the Social Security Act. In addition, the amendment makes some changes to the DHS program that were not required by OBRA 1993. It revises the DHS payment formula for state chest and mental hospitals and adopts the Medicaid inpatient utilization rate defined in §1923(b)(2) of the Act. The amendment is effective September 1, 1995.

If additional information is needed, please contact Brenda Salisbery, Texas Department of Health at (512) 338-6521.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606015 Marina S. Henderson  
Executive Deputy Commissioner  
Health and Human Services Commission

Filed: May 1, 1996

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 96-09, Amendment Number 510.

The amendment updates the State Plan with the current reimbursement rates for obstetrical and pediatric services, in accordance with §1926 of the Social Security Act. The amendment is effective July 1, 1996.

If additional information is needed, please contact Genie DeKneef, Texas Department of Health at (512) 338-6509.

Issued in Austin, Texas, on May 2, 1996.

TRD-9606016 Marina S. Henderson  
Executive Deputy Commissioner  
Health and Human Services Commission

Filed: May 1, 1996

## **Texas Higher Education Coordinating Board**

### **Request for Additional Proposals (RFP)- 1996 Grants Program Title II-Dwight D. Eisenhower Professional Development Program (P.L. 103-382)**

Approximately, \$1.26 million will be available to support additional 1996-97 K-12 teachers and other staff gain access to professional development in mathematics and science.

Residual funds will be competitively distributed in Texas under Title II (Dwight D. Eisenhower Professional Development Program) of the Improving America's School Act of 1994. Begun in 1985 as Title II of the Education for Economic Security Act (EESA), the Eisenhower Professional Development Program is designed to support training and retraining of elementary and secondary teachers and other staff in mathematics and science. Proposals for residual funding must be submitted by August 1, 1996 to the Texas Higher Education Coordinating Board. Applica-

tions are available June 5, 1996.

The Board will approve recommendations for awards at its October 17-18, 1996 meeting. Projects are funded under this application for 11 months and must be completed by September 30, 1997. All public and private colleges and universities, and non-profit organizations of proven effectiveness in educating mathematics and science teachers are eligible to apply for grants under the Dwight D. Eisenhower Professional Development Program.

For applications and more information, contact Nan Broussard at (512) 483-6318.

Issued in Austin, Texas on May 6, 1996

TRD-9606274 James McWhorter  
Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board

Filed: May 7, 1996

## **Texas Department of Human Services Correction of Error**

The Texas Department of Human Services proposed amendments to §12.3 and §12.25, concerning eligibility of contractors and facilities and denials and terminations, in its Special Nutrition Programs chapter. The rules appeared in the April 5, 1996, issue of the *Texas Register* (21 TexReg 3000).

On page 3000, §12.3(a) and (b) contained an error as published. The sections should read:

"§12.3. Eligibility of Contractors and Facilities.

(a) To be eligible to participate in the Child and Adult Care Food Program (CACFP), contractors must

[(1)] meet the definitions in 7 Code of Federal Regulations §226.2, [and] the appropriate requirements of 7 Code of Federal Regulations §§226.6 and 226.15-226.19(a), **and this title.**:]

(b) To be eligible to participate in the CACFP as a day care home sponsor, applicants must:

## **Texas Department of Insurance Notice of Application**

Notice is given to the public of the application of ECCA Managed Vision Care, Inc., San Antonio, Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) for the sole purpose of providing a single health care service plan offering a vision care service in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, 6th Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to ECCA Managed Vision Care, Inc., without a public hearing.

Issued in Austin, Texas, on May 7, 1996.

TRD-9606365

Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: May 8, 1996

## **Notices of Public Hearing**

The Commissioner of Insurance will hold a public hearing under Docket Number 2225 on June 5, 1996, at 9:00 a.m. in Room 102 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider the adoption of proposed new section 28 TAC §5.10016, concerning the adoption by reference of new forms to be used in the Residential Property Insurance Market Assistance Program.

The proposed new section and the statutory authority for the proposal to §5.10016, were published in the May 3, 1996, issue of the *Texas Register* (21 TexReg 3778).

Issued in Austin, Texas, on May 7, 1996.

TRD-9606364 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: May 8, 1996

The Commissioner of Insurance will hold a public hearing under Docket Number 2226 on June 5, 1996, at 9:00 a.m. in Room 102 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider the adoption of proposed amendment 28 TAC §5.4001, concerning the plan of operation of the Texas Catastrophe Property Insurance Association (TCPA).

The proposed new section and the statutory authority for the proposal to §5.4001, were published in the March 29, 1996, issue of the *Texas Register* (21 TexReg 2525).

Issued in Austin, Texas, on May 7, 1996.

TRD-9606363 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: May 8, 1996

## **Texas Natural Resource Conservation Commission**

### **Declaration of Administrative Completeness and Notice of Application to Obtain a Texas Weather Modification Permit**

Weather Modification Incorporated; Application Number 96E623489 for a Texas weather modification PERMIT under Texas Water Code Chapter 18, Rules of the Texas Natural Resource Conservation Commission 30 TAC Chapter 289, and the Texas Weather Modification Act of 1967. Issuance of a permit certifies that the person(s) or organization holding the permit may conduct weather modification activities. Issuance of a permit is contingent upon the applicant: (A) paying the permit fee and submitting a completed permit application; (B) submitting a project operations plan that describes in detail how the proposed project is to be conducted, including a map of

the target and operational areas; (C) providing proof of liability insurance; and (D) publication of an approved Notice of Intention to Conduct Cloud-Seeding Activities in area newspapers, with affidavits attesting to such publication submitted to the Commission. The applicant has not previously held a Texas weather modification permit. The applicant was issued a Texas weather-modification license on April 26, 1996.

The Commission's Weather Modification Advisory Committee, at its March 27, 1996 meeting in Austin, examined the permit application and recommended that the permit be issued. The Commission staff concurs with the Committee's recommendation. This application is subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain matters. The Executive Director will act on the permit application unless one or more persons file written protests and/or requests for hearing: (A) within ten days from the date notice is published in the *Texas Register*, and/or (B) within 30 days after the first publication of the Notice of Intent in a newspaper or newspapers having a general circulation within each county in which applicant proposes to conduct rainfall enhancement (cloud seeding) activities.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the application number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not issue the PERMIT and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing on this application must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087, (512) 239-3315. For information concerning technical aspects of the permit, contact George Bomar in the Water Planning and Assessment Division, Weather Modification Section, MC 160, at the same P.O. Box address above, or telephone (512) 239-0770. For information concerning hearing procedures or citizen participation, contact the Public Interest Counsel, MC 103, at the same P.O. Box address above, or telephone (512) 239-6363.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606265      Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 6, 1996



## Enforcement Orders

An agreed enforcement order was entered regarding A.R.W., INC., Docket Number 96-0460-PST-E (TNRCC Facility 047287, Enforcement ID E10770) on April 22, 1996 assessing \$1,080 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Warmink, Staff Attorney, at (512) 239-0612 or Theresa Haan, Enforcement Coordinator, (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding M and M FUELS, Docket Number 96-0439-PST-E (TNRCC Facility 14984, Enforcement ID E11281) on April 22, 1996 assessing \$9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond C. Winter, Staff Attorney, at (512) 239-0600 or Mick Wilson, Enforcement Coordinator, (512) 239-2126, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding HORN MARKETING, INC., Docket Number 96-0420-PST-E (TNRCC Owner ID 12389, Enforcement ID E10497) on April 22, 1996 assessing \$95,350 in administrative penalties with \$86,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Greg Warmink, Staff Attorney, at (512) 239-0612 or Karen Berryman, Enforcement Coordinator, (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding Mansoor Virani, Docket Number 96-0523-PST-E (TNRCC Facility 060451, Enforcement ID E10433) on April 22, 1996 assessing \$1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patricia Capps, Staff Attorney, at (512) 239-0682 or Srini Kusumanchi, Enforcement Coordinator, (512) 239-5874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding TRINITY TESTING LABORATORIES, INC., Docket Number 95-1177-IHW-E (SWR Number 83312) on April 22, 1996 assessing \$13,400 in administrative penalties with \$11,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator, (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding LYONDELL-CITGO REFINING COMPANY, LTD., Docket Number 95-1533-IHW-E (SWR Number 30092) on April 22, 1996 assessing \$19,600 in administrative penalties with \$5,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Sue Rogers, Enforcement Coordinator, (512) 239-6213, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding ASSOCIATED MILK PRODUCERS, INC., Docket Number 96-0495-IHW-E (SWR Number 32496) on April 22, 1996 assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Warmink, Staff Attorney, at (512) 239-0612 or Barbara Beynon, Enforcement Coordinator, (512) 239-2586, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.



Issued in Austin, Texas, on May 3, 1996.

TRD-9606264

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 6, 1996

◆ ◆ ◆  
**Notice of Application for Municipal  
Solid Waste Management Facilities**

For the week ending May 3, 1996

APPLICATION BY WESTERN WASTE INDUSTRIES, INC., Proposed Permit Amendment Number MSW576-A, authorizing their Type I (Landfill) municipal solid waste management facility. The proposed permit amendment authorizes a vertical expansion of their existing solid waste management facility. The existing site covers approximately 95 acres of land. The average waste acceptance rate is projected to be about 360,000 cubic yards per year. The facility is located 1, 500 feet east of the intersection of Interstate Highway 30 and U.S. Highway 82, one mile west of the City of New Boston, in Bowie County, Texas.

The Executive Director will issue the permit unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of this notice. If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement "I/we request an evidentiary public hearing."; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

If one or more protests and/or requests for hearing are filed on an application, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where an evidentiary hearing may be held. If no protests and/or requests for hearing are filed on an application, the Executive Director will approve the application. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the TNRCC, Chief Clerk's Office, P.O. Box 13087, Mail Code 105, Building F, Room 4301, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606267

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 6, 1996

**Notice of Application for Waste Disposal  
Permits**

Attached are Notices of Applications for waste disposal permits issued during the period of April 29th thru May 3, 1996.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the permit number or other recognizable reference to this application; (3) the statement "I/we request a public hearing;" (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; (5) a description of the location of your property relative to the applicant's operations; and (6) your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

CAMP FOR ALL FOUNDATION, 10500 Northwest Freeway, Suite 145, Houston, Texas 77092; the Camp For All Wastewater Treatment Plant is approximately 270 feet south of the intersection of Rehburg Road and Oliver Earl Lane north of the Town of Burton in the northwest portion of Washington County, Texas; new; 13838-01.

TOWN OF LINDSAY, P.O. Box 153, Lindsay, Texas 76250-0153; the wastewater treatment plant is southeast of the City of Lindsay, approximately 600 feet east of Farm-to-Market Road 3108 bridge over Elm Fork Trinity River in Cooke County, Texas; renewal; 10923-01.

MUNSON POINT PROPERTY OWNERS ASSOCIATION AND JOHN MUNSON, P.O. Box 1127, Denison, Texas 75020; the wastewater treatment facilities and the disposal site are 2,500 feet south and 1,000 feet east from the north end of State Highway 84 in Grayson County, Texas; new; 13823-01.

PROMISED LAND DAIRY, INCORPORATED, Route 3 Box 197C, Floresville, Texas 78114; the treatment/storage lagoon and irrigation site are adjacent to State Highway 97 approximately four miles southwest of the intersection of

State Highway 97 and Loop 181, near the City of Floresville, Wilson County, Texas; new; 03873.

DONALD V. SAIA, Hickory Ridge Mobile Home Park #13, Palestine, Texas 785801; the Hickory Ridge MHP Wastewater Treatment Plant is on the north side of Farm-to-Market Road 320, east of the intersection of Farm-to-Market Roads 3324 and 320, approximately two and one half miles west of the City of Palestine in Anderson County, Texas; new; 13829-01.

CITY OF STRATFORD, P.O. Box 188, Stratford, Texas 79084; the wastewater treatment facilities and disposal site are south of Stratford and west of U.S. Highway 287, approximately 4,000 feet southeast of the intersection of U.S. Highways 54 and 287 in Sherman County, Texas; renewal; 10293-01.

TEXAS PARKS & WILDLIFE DEPARTMENT, Route 2, Box 20, Tatum, Texas 75691; the wastewater treatment facility and the disposal site are approximately 1,000 feet south of Farm-to-Market Road 1716 and approximately 4,500 feet south-southeast of the intersection of State Highway 43 and Farm-to-Market Road 1716 in Rusk County, Texas; renewal; 13285-01.

ENVIRONMENTAL PROCESSING SYSTEMS, LC., 2425 West Loop South, Suite 200, Houston, Texas 77027; will authorize the construction and operation of two waste disposal wells, six proposed tanks, and related surface facilities for the storage, processing and disposal of non-hazardous industrial waste. Wastes will be received from off-site sources on a commercial basis; the facility will be located on Hatcherville Road in southernmost Liberty County, about 4.2 miles northwest of the City of Mont Belvieu, Chambers County, Texas; new; Permit Numbers WDW-316 and WDW-317.

ROGER EARL BLACK, Route 1, Box 727-L, Longview, Texas 75602; to authorize the land application of domestic septage; the application area will be under cultivation and in vegetation, with crops consisting of but not limited to oats and clover; the septage application site is on the west side of Gallilee Road; approximately 0.9 mile north of Interstate Highway 20; approximately three miles south-east of the City of Hallsville in Harrison County, Texas; new; Permit Number 03883.

Issued in Austin, Texas, on May 3, 1996.

TRD-9606266 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 6, 1996

## Notice of Opportunity to Comment on Permitting Actions

For the week ending May 3, 1996

The following applications will be signed by the Executive Director in accordance with 30 TAC §263.2, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain uncontested permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the permit number or other recognizable reference to this application; (3) the statement "I/we request a public hearing"; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; (5) a description of the location of your property relative to the applicant's operations; and (6) your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

### APPLICATION BY FAYETTE COUNTY TO REGULATE ON-SITE SEWAGE FACILITIES WITHIN THEIR JURISDICTION.

SIGNATURE OF PROPOSED ORDER APPROVING THE APPLICATION BY VILLAGE AT WESTERN OAKS MUNICIPAL UTILITY DISTRICT OF TRAVIS COUNTY FOR APPROVAL OF \$2,100,000 UNLIMITED TAX AND REVENUE BOND ISSUE, THIRD ISSUE, 7.71% NET EFFECTIVE INTEREST RATE, SERIES 1996. Applicant requests that the Commission Approve a \$2,100,000 Unlimited Tax and Revenue Third Bond Issue to fund expansion of District facilities. (TNRCC Internal Control Number 022096-D01, Randy M. Nelson)

Consideration of the application of San Isidro Water Supply Corporation for a Water CCN in Starr County, Texas. (Application # 31081-C, Albert Holck)

Consideration of the application of San Isidro Water Supply Corporation for a Sewer CCN in Starr County, Texas. (Application # 31082-C, Albert Holck)

CITY OF PALESTINE for a minor amendment to Permit Number 10244-01 in order to add an interim III phase volume with a discharge of 4,700,000 gallons per day. The permit currently authorizes a discharge of treated domestic wastewater at an interim I and interim II phase volume not to exceed an average flow of 2,050,000 gallons per day and a final phase volume not to exceed an average flow of 6,360,000 gallons per day, which will remain the same. The Town Creek Wastewater Treatment Plant is approximately four miles southwest of the intersection of State Highway 256 and U.S. Highway 84-79 at the confluence of Basset Creek and Town Creek, southwest of the City of Palestine in Anderson County, Texas.

COASTWIDE MARINE SERVICES for a minor amendment to Permit Number 10931-01 to increase the peak flow (2-hour peak) from 4.2 gallons per minute to ten gallons per minute. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 4,000 gallons per day,

which will remain the same. The wastewater treatment facilities are on the southeast portion of Pelican Island, adjacent to the Galveston Channel, approximately 6,000 feet east of the Todd Shipyards in Galveston County, Texas.

PETROLEUM FUEL and TERMINAL COMPANY for a minor amendment to Permit Number 02311 to delete outfalls and delete wastestreams from Outfall 001. The permit currently authorizes a discharge of: treated industrial wastewater (stormwater, dock washwater, tank bottoms and oily wastes) at a volume not to exceed an average flow of 165,000 gallons per day via Outfall 001; treated domestic sewage at a volume not to exceed an average flow of 1,000 gallons per day via Outfall 002; and, treated ballast water at a volume not to exceed 9,000,000 gallons during any 24-hour period via Outfall 003. The proposed amendment would authorize a discharge of stormwater runoff at a volume not to exceed an average flow of 330,000 gallons during any 24-hour period. The facility was a formerly operated as a terminal facility for loading and unloading crude oil. The plant site is on the north corner of Quintana Island bounded by the Intracoastal Waterway and Freeport Harbor Approach Channel in Brazoria County, Texas.

RISING SUN DAIRY for a minor amendment to Permit Number 03086 to add an additional waste storage pond to the existing four ponds. The current permit authorizes disposal of waste and wastewater from a dairy with a maximum of 1, 600 head. Wastewater is beneficially used on 39 acres of agricultural land located on-site. Waste is beneficially used on agricultural land located both on-site and off-site. No discharge of pollutants into the waters of the State is authorized by this permit. The dairy is on the east side of Saint George Road and approximately one mile southwest of the intersection of U.S. Highway 377 and Saint George Road in Erath County, Texas.

Consideration of the application of Runaway Bay to Transfer Water CCN Number 10272 from Runaway Bay Properties, Inc.; Amend Water CCN Number 10272; and Cancel Water CCN Number 10272 in Wise County, Texas. (Application # 31003-S, Holck)

Consideration of the application of Runaway Bay to Transfer Sewer CCN Number 20106 from Runaway Bay Properties, Inc.; Amend Sewer CCN Number 20106; and Cancel Sewer CCN Number 20106 in Wise County, Texas. (Application # 31004-S, Holck)

Consideration of the application of City of Runaway Bay to Amend Water CCN Number 10272 by Decertifying a Portion in Wise County, Texas. (Application # 31005-C, Albert Holck)

Consideration of the application of City of Runaway Bay to Amend Sewer CCN Number 20106 by Decertifying a Portion in Wise County, Texas. (Application # 31006-C, Albert Holck).

Issued in Austin, Texas, on May 3, 1996.

TRD-9606263

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 6, 1996

## Texas Department of Protective and Regulatory Services

### Correction of Error

The Texas Department of Protective and Regulatory Services proposed the repeal of §§720.24-720.37 and §§720.39-720.62. The rules appeared in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2034).

The part was published as "Part I. Texas Department of Protective and Regulatory Services" should read as "Part XIV. Texas Department of Protective and Regulatory Services"

## Texas Department of Protective and Regulatory Services

### Request for Proposal

Announcement of Intention to procure Emergency Shelter Services. The Texas Department of Protective and Regulatory Services (PRS), Adult Protective Services (APS), Region 08 (Bexar County and surrounding area), announces its intention of selecting a vendor to provide Emergency Shelter services to APS clients through the APS Emergency Client Services (ECS) program.

**Service Description:** Licensed Personal Care Home service agency will provide 24 hour residential emergency shelter, short-term (up to 60 days or longer with APS approval), for abused and neglected elderly and disabled clients in Region 08 who cannot remain in their present environment but who are not eligible for existing community services. Through this contract the provider will make available beds on a short term emergency basis as an intermediary protective environment for the elderly or disabled adult who is at risk of or the victim of abuse or neglect. Provide basic and primary need services that are within the scope of the vendor's personal care license to include: room and board; twenty-four hour protective supervision; personal care; housekeeping and laundry service for personal clothing; meal preparation; assistance with medical regimen and ancillary assistance such as reminding, securing, storing, uncapping (if client is admitted to the facility with medication, the nursing staff will confirm medication regiment with the client's physician); and transportation by the program vehicle as available or by community carrier. An elderly or disabled adult must be receiving adult protective services from PRS in accordance with §§48.002(5) and 48.021(a) of the Human Resources Code, and have a service plan developed by the Department under these Sections which indicates that emergency client services are needed to remedy abuse, neglect, or exploitation.

**Background:** APS investigates reports of abuse, neglect and exploitation of the elderly and adults with disabilities who are 18 to 64 years of age. In some cases, ECS funds are utilized to purchase Emergency Shelter Services for clients to remedy abuse or neglect. The APS unit rate paid will not exceed \$46 per day, based on local market conditions. PRS, Region 08 expenditures for procuring Emergency Shelter Services will be approximately \$165,000. Funding will be dependent upon available appropriations. The effective dates of any contract awarded will be September 1, 1996, through August 31, 1997, with the option for renewal up to a maximum of four years. Emergency

Shelter services will be provided in Bexar County for clients who have been residing in the following counties: Bexar, Comal, Guadalupe, Atascosa, Karnes, Frio, Wilson, La Salle, Gillespie, Kerr, Kendall, Bandera, Real, Uvalde, Medina, Dimmit, Zavala, Val Verde, Maverick, Kinney, Edward, Victoria, Goliad, Jackson, Calhoun, Dewitt, Gonzales, and Lavaca.

**Eligible Offerors:** Personal Care Home Service Agencies licensed by the Texas Department of Health. Historically underutilized businesses, public or private profit, or non-profit agencies with demonstrated knowledge, competence, and qualifications in performing these services are encouraged to apply.

**Process:** A provider will be selected through a competitive negotiation process. The number of referrals will depend upon how often Emergency Shelter Services are authorized for clients living in the counties served and availability of funding. The provider must demonstrate compliance with the RFP packet requirements. The provider must ensure that staff providing direct services must have appropriate training and experience with frail elderly and adults with disabilities who are 18 to 64 years of age. References must be provided as specified in the packet.

Offerors must submit their proposals to the Department prior to 12:00 p.m., June 7, 1996. It is expected that a contract will be issued by September 1, 1996.

**Contact Person:** RFP packets may be obtained by contacting Janice Zitelman, APS Operations Support Director, Mail Code 278-5, Texas Department of Protective and Regulatory Services, P.O. Box 23990, San Antonio, Texas 78223-0990, Telephone (210) 337-3155, Fax (210) 337-3589.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606211 C. Ed Davis  
Deputy Commissioner for Legal Services  
Texas Department of Protective and  
Regulatory Services

Filed: May 6, 1996



Announcement of Intention to procure Guardianship and Representative Payee Services. The Texas Department of Protective and Regulatory Services (PRS), Adult Protective Services (APS), Region 03, is seeking a combined contract for guardianship and representative payee services for Tarrant County.

**Service Description:** Guardian: Serve as guardian for Adult Protective Services (APS) clients, who are incapacitated as defined by Probate Code Section 601, who are in need of guardianship services, and for whom there is no one willing or able to serve as guardian. These clients include elderly persons and adults with disabilities who are in a state of abuse, neglect, or exploitation that would be remedied by guardianship and children in need of guardians who are aging out of Child Protective Services (CPS) conservatorship on their 18th birthdays. Services purchased include application for guardianship and provision for the care, control, and protection of the ward and/or his estate, assessment, service plan development, accessing services, monitoring the status of wards, ensuring that ward's needs for food, shelter, clothing, medical and psychiatric care, if needed, are met using the funds of the estate; and managing the estate. Vendor must conduct a criminal background check and check with PRS regarding validated perpetrator status of any prospective or existing

employees and volunteers who will have access to the wards referred by PRS; meet Probate Code requirements; comply with state and federal licensing and certification requirements, health and safety standards, and PRS APS requirements; and obtain and furnish proof of bonding and insurance coverage. Clients may have a number of diagnoses and problems including physical disabilities, dementia, mental illness, mental retardation, related conditions, and severe behavior problems.

**Representative Payee:** Serve as representative payee for Adult Protective Services (APS) clients who are incapacitated as defined by Probate Code Section 601, who are in need of representative services, and for whom there is no one willing or able to serve as representative payee. These clients include elderly persons and adults with disabilities who are in a state of abuse, neglect, or exploitation that would be remedied by having a representative payee. Activities include filing with the Social Security Administration to receive funds on behalf of a beneficiary who is unable to administer his or her own finances; systematically ensuring client's family and personal financial resources and obligations are met and bills paid; to the extent that resources allow, ongoing financial needs are identified and planned for; and to the extent possible, ensure client receives emergency benefits, as eligibility allows.

**Background:** Guardian: The contractor must ensure that the ward has access to a safe, clean environment, has access to assistance in performing basic life functions, including bathing, grooming, feeding, exercising, dressing, toileting, transfer/ambulating and medication administration as needed, has access to regular nutritious meals, has access to any needed medical, psychiatric, habilitative and other services, has access to appropriate social and recreational activities, has well-managed finances, has appropriate supervision as needed, is involved in decisions concerning his welfare to the extent possible depending on the ward's condition, and is maintained in the least restrictive manner, using estate funds and accessing available public funds on behalf of the ward.

**Representative Payee:** The contractor must ensure that the client's assets are protected and not subject to loss, theft or malicious actions; contractor must be free from willful or gross negligence and malicious actions regarding client's property; to the extent that resources allow, the contractor directs and prioritizes bill paying activities, financial planning and budgeting; remains fully informed of client's financial obligations and available resources, and ensures authorized services are delivered in a timely manner.

PRS expenditures for procuring guardianship and representative payee services will not exceed \$44,000 annually. Funding will be dependent upon available appropriations that PRS has allocated to these services. The effective dates of any contract awarded will be November 1, 1996 through August 31, 1997, with the option for renewal for a maximum of four years.

Guardianship services will be provided to approximately 65 client/wards of Tarrant County, with upward of an additional six referrals every three months.

Representative Payee services will be provided to approximately 25 clients of Tarrant County, with upward of an additional six referrals every three months.

**Eligible Applicants:** Eligible offerors are public or private nonprofit or for-profit agencies and individuals who have a minimum of one year experience serving aged and/or

disabled individuals. Eligible offerors must have demonstrated knowledge, competence, and qualifications in serving aged and adults with disabilities. PRS is an Affirmative Action/Equal Opportunity state agency.

**Process:** Offerors must submit their proposals to the Department prior to 5:00 p.m., June 15, 1996. It is expected that a contract will be issued by September 1, 1996. Responsive proposals will be reviewed and ranked by a group of Department employees and other individuals with knowledge of guardianship and representative payee service. The Department may reject all bids at its discretion. Negotiations may be entered into with a number of the qualified bidders.

**Contact Person:** The complete Request for Proposal instructions can be obtained by contacting Bettye Manzay, Contract Manager, Mail Code 012-5, Texas Department of Protective and Regulatory Services, P.O. Box 181839, Arlington, Texas 76096-1839.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606208      C. Ed Davis  
Deputy Commissioner for Legal Services  
Texas Department of Protective and  
Regulatory Services

Filed: May 6, 1996



Announcement of Intention to procure Guardianship Services. The Texas Department of Protective and Regulatory Services (PRS), Adult Protective Services (APS), Region 03, announces its intention of selecting vendors to provide Guardianship services to clients in Dallas and Collin counties.

**Service Description:** Serve as guardian for Adult Protective Services (APS) clients, who are incapacitated as defined by Probate Code Section 601, and for whom no one is willing or able to serve as guardian. These clients include elderly persons and adults with disabilities who are in a state of abuse, neglect, or exploitation that would be remedied by guardianship and children in need of guardians who are aging out of Child Protective Services (CPS) conservatorship on their 18th birthdays. Services purchased include application for guardianship and provision for the care, control, and protection of the ward and/or his estate, assessment, service plan development, accessing services, monitoring the status of wards, ensuring that wards' needs for food, shelter, clothing, medical and psychiatric care, if needed, are met using the funds of the estate, and managing the estate. Vendor must conduct a criminal background check and check with PRS regarding validated perpetrator status of any prospective or existing employees and volunteers who will have access to the wards referred by PRS; meet Probate Code requirements; comply with state and federal licensing and certification requirements, health and safety standards, and PRS APS requirements; and obtain and furnish proof of bonding and insurance coverage. Clients may have a number of diagnoses and problems including physical disabilities, dementia, mental illness, mental retardation, related conditions, and severe behavior problems.

**Background:** The contractor must ensure that the ward has access to a safe, clean environment, has access to assistance in performing basic life functions, including bathing, grooming, feeding, exercising, dressing, toileting, transfer/ambulating and medication administration as needed, has access to regular nutritious meals, has access

to any needed medical, psychiatric, habilitative and other services, has access to appropriate social and recreational activities, has well-managed finances, has appropriate supervision as needed, is involved in decisions concerning his welfare to the extent possible depending on the ward's condition, and is maintained in the least restrictive manner, using estate funds and accessing available public funds on behalf of the ward.

PRS expenditures for procuring guardianship services in this two county area will not exceed \$50,000 annually. Funding will be dependent upon available appropriations that PRS has allocated to these services. The effective dates of any contract awarded will be September 1, 1996 through August 31, 1997, with an option for renewal up to a maximum of four years.

Guardianship services will be provided to approximately 25 clients/wards in the two county area with up to six additional client/wards every three months. **Eligible Applicants:** Entities having a minimum of one year experience serving aged and/or disabled individuals. Historically underutilized businesses, public or private profit, or non-profit agencies with demonstrated knowledge, competence, and qualifications in performing these services are encouraged to apply.

**Process:** Offerors must submit their proposals to the Department prior to 5:00 p.m., June 15, 1996. It is expected that a contract will be issued by September 1, 1996. Responsive proposals will be reviewed and ranked by a group of Department employees and other individuals with knowledge of guardianship services. The Department may reject all bids at its discretion. Negotiations may be entered into with a number of the qualified bidders.

**Contact Person:** The complete Request for Proposal instructions can be obtained by contacting Bettye Manzay, Contract Manager, Mail Code, 012-5, Texas Department of Protective and Regulatory Services, P.O. Box 181839, Arlington, Texas 76096-1839.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606207      C. Ed Davis  
Deputy Commissioner for Legal Services  
Texas Department of Protective and  
Regulatory Services

Filed: May 6, 1996



Announcement of Intention to procure Personal Assistance Services. The Texas Department of Protective and Regulatory Services (PRS), Adult Protective Services (APS), Region 03 (Tarrant County and surrounding area), announces its intention of selecting vendors to provide Personal Assistance Services to APS clients through the APS Emergency Client Services (ECS) program.

**Service Description:** Licensed home and community support service agencies will employ attendants to provide nonskilled, nontechnical services in a client's home. Tasks performed for the client include: personal care, housekeeping, meal preparation, escort, and supervision. An elderly or disabled adult must be receiving adult protective services from PRS in accordance with §48.002(5) and §48.021(a) of the Human Resources Code, and have a service plan developed by the Department under these Sections which indicates that emergency client services are needed to remedy abuse, neglect, or exploitation.

**Background:** APS investigates reports of abuse, neglect

and exploitation of the elderly and adults with disabilities who are 18 to 64 years of age. In some cases, ECS funds are utilized to purchase Personal Assistance Services for clients to remedy abuse or neglect. The APS unit rate paid will be \$7.44 per hour. If the client is identified as high risk, the unit rate is \$9.63 per hour. PRS Region 03 expenditures for procuring Personal Assistance Services will be approximately \$115,000. Funding will be dependent upon available appropriations. The effective dates of any contract awarded will be September 1, 1996 through August 31, 1997. Personal Assistance Services will be provided in the following counties: Collins, Cooke, Dallas, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise. A contractor may serve one or more of these counties.

**Eligible Applicants:** Home and Community Support Service Agencies licensed by the Texas Department of Health. Historically underutilized businesses, public or private profit, or nonprofit agencies with demonstrated knowledge, competence, and qualifications in performing these services are encouraged to apply.

**Process:** Vendors will be selected through a competitive multiple awards process. The names of the agencies that receive a contract with PRS will be placed in a directory of contract agencies. The number of referrals will depend upon how often Personal Assistance Services are authorized for clients living in the counties served, client selection of agency and availability of funding. Vendors must demonstrate compliance with minimum Request for Proposal (RFP) requirements. Vendors must ensure that staff providing direct services must have appropriate training and experience with frail elderly and adults with disabilities who are 18 to 64 years of age. References must be provided as specified in the RFP packet.

Offerors must submit their proposals to the Department prior to 5:00 p.m., June 14, 1996. It is expected that a contract will be issued by September 1, 1996.

**Contact Person:** The complete RFP packets may be obtained by contacting Bettye Manzey, APS Program Director, Mail Code 012-5, Texas Department of Protective and Regulatory Services, P.O. Box 181839, Arlington, Texas 76096, (817) 264-4000 Ext. 2348.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606209 C. Ed Davis  
Deputy Commissioner for Legal Services  
Texas Department of Protective and  
Regulatory Services

Filed: May 6, 1996



Announcement of Intention to procure Personal Assistance Services. The Texas Department of Protective and Regulatory Services (PRS), Adult Protective Services (APS), Region 07 (Travis County and surrounding area), announces its intention of selecting vendors to provide Personal Assistance Services to APS clients through the APS Emergency Client Services (ECS) program.

**Service Description:** Licensed home and community support service agencies will employ attendants to provide nonskilled, nontechnical services in a client's home. Tasks performed for the client include: personal care, housekeeping, meal preparation, escort, and supervision. An elderly or disabled adult must be receiving adult protective services from PRS in accordance with §48.002(5) and

§48.021(a) of the Human Resources Code, and have a service plan developed by the Department under these Sections which indicates that emergency client services are needed to remedy abuse, neglect, or exploitation.

**Background:** APS investigates reports of abuse, neglect and exploitation of the elderly and adults with disabilities who are 18 to 64 years of age. In some cases, ECS funds are utilized to purchase Personal Assistance Services for clients to remedy abuse or neglect. The APS unit rate paid will be \$7.44 per hour. If the client is identified as high risk, the unit rate is \$9.63 per hour. Funding will be dependent upon available appropriations. The effective dates of any contract awarded will be September 1, 1996 through August 31, 1997, with the option for renewal of up to a maximum of four years. Personal Assistance Services will be provided in the following counties: Bastrop, Bell, Blanco, Bosque, Brazos, Burleson, Burnet, Caldwell, Coryell, Falls, Fayette, Freestone, Grimes, Hamilton, Hays, Hill, Lampasas, Lee, Leon, Limestone, Llano, Madison, McLennan, Milam, Mills, Robertson, San Saba, Travis, Washington, and Williamson. A contractor may serve one or more of these counties.

**Eligible Applicants:** Home and Community Support Service Agencies licensed by the Texas Department of Health. Historically underutilized businesses, public or private profit, or nonprofit agencies with demonstrated knowledge, competence, and qualifications in performing these services are encouraged to apply.

**Process:** Vendors will be selected through a competitive multiple awards process. The names of the agencies that receive a contract with PRS will be placed in a directory of contract agencies. The number of referrals will depend upon how often Personal Assistance Services are authorized for clients living in the counties served, client selection of agency and availability of funding. Vendors must demonstrate compliance with minimum processing requirements. Vendors must ensure that staff providing direct services must have appropriate training and experience with frail elderly and adults with disabilities who are 18 to 64 years of age. References must be provided as specified in the offeror's packet.

**Contact Person:** Offeror's packets may be obtained by contacting Dennis Hill, APS Operations Support Director, Mail Code 019-1, Texas Department of Protective and Regulatory Services, P.O. Box 15995, Austin, Texas 78761, (512) 834-3308. Completed packets must be received by 5:00 p.m. May 31, 1996.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606210 C. Ed Davis  
Deputy Commissioner for Legal Services  
Texas Department of Protective and  
Regulatory Services

Filed: May 6, 1996



## Public Utility Commission of Texas

### Notice of Application Filed Pursuant to Public Utility Commission Substantive Rule 23.94

Notice is given to the public of filing with the Public Utility Commission of Texas an application on April 10, 1996, pursuant to Public Utility Commission Substantive Rule 23.94 for approval of a rate change.

Tariff Title and Number. Application of Taylor Telephone Cooperative, Inc. for Approval of a Rate Change Pursuant to Public Utility Commission Substantive Rule 23.94. Tariff Control Number 15657.

The Application. Taylor Telephone Cooperative, Inc. is requesting approval for a rate increase for local directory assistance service after an allowance of three calls per month at no charge.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before July 1, 1996.

Issued in Austin, Texas, on May 7, 1996.

TRD-9606285 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 7, 1996

◆ ◆ ◆

Notice is given to the public of filing with the Public Utility Commission of Texas an application on April 10, 1996, pursuant to Public Utility Commission Substantive Rule 23.94 for approval of a rate change.

Tariff Title and Number. Application of Brazoria Telephone Company for Approval of a Rate Change Pursuant to Public Utility Commission Substantive Rule 23.94. Tariff Control Number 15656.

The Application. Brazoria Telephone Company is requesting approval for a rate increase for local directory assistance service after an allowance of three calls per month at no charge.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before July 1, 1996.

Issued in Austin, Texas, on May 7, 1996.

TRD-9606284 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 7, 1996

◆ ◆ ◆

Notice is given to the public of filing with the Public Utility Commission of Texas an application on April 2, 1996, pursuant to Public Utility Commission Substantive Rule 23.94 for approval of a rate change.

Tariff Title and Number. Application of Central Texas Telephone Cooperative, Inc. for Approval of a Rate Change Pursuant to Public Utility Commission Substantive Rule 23.94. Tariff Control Number 15602.

The Application. Central Texas Telephone Cooperative, Inc. is requesting approval for a rate increase for local directory assistance service after an allowance of three calls per month at no charge.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call

the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before May 31, 1996.

Issued in Austin, Texas, on May 7, 1996.

TRD-9606283 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 7, 1996

◆ ◆ ◆

## Notice of Intent to File Pursuant to Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Pharr-San Juan-Alamo ISD in Pharr, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Pharr-San Juan-Alamo ISD in Pharr, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15739.

The Application. Southwestern Bell Telephone Company is requesting approval of a 10 station addition to the existing PLEXAR-Custom service for Pharr-San Juan-Alamo ISD. The geographic service market for this specific service is the Pharr, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606242 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 6, 1996

◆ ◆ ◆

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for McAllen ISD in McAllen, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for McAllen ISD in McAllen, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15740.

The Application. Southwestern Bell Telephone Company is requesting approval of a 85 station addition to the existing PLEXAR-Custom service for McAllen ISD. The geographic service market for this specific service is the McAllen, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 6, 1996.

Filed: May 6, 1996

◆        ◆        ◆

## Notice of Public Meeting

The core group for Project Number 15345 will meet Tuesday, May 21, 1996, in the Commission's offices at 7800 Shoal Creek Boulevard, Austin, Texas, 78757 to review several scenarios related to the NPA relief planning for area codes 210 and 817. The core group consists of current and potential code holders, the Office of Public Utility Counsel, Consumers Union, other registered organizations, and Commission Staff. Other members of the public may attend the meeting and participate. Please direct any questions to Carole Vogel, (512) 458-0287.

Issued in Austin, Texas, on May 7, 1996.

TRD-9606282

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 7, 1996

◆        ◆        ◆

## Public Notice

On May 3, 1996, GTE Southwest, Inc. (GTE-SW) filed notice to file LRIC studies pursuant to Substantive Rule 23.91 for Toll MTS and Optional Calling Plans in Project Numbers 12475 and 12481, Applications of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Workplans Pursuant to Substantive Rule 23.91. GTE-SW expects to file these studies on May 13, 1996.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by June 27, 1996. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606244

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 6, 1996

◆        ◆        ◆

## Texas Racing Commission

### Correction of Error

The Texas Racing Commission adopted amendment to §§321.204, 321.206-321.208, and new §321.209, concerning pari-mutuel wagering on simulcast races. The rules appeared in the April 19, 1996, issue of the *Texas Register* (21 TexReg 3433).

On page 3433, §321.208(c)(2): The word "and" should be inserted after the semi-colon.

◆        ◆        ◆

## The Texas A&M University System

### Public Notice

Pursuant to the Texas Government Code, §552.123, the following candidates are the finalists for the position of President of Texas A&M International University and upon the expiration of 21 days, final action is to be taken by the Board of Regents of The Texas A&M University System:

- (1) Dr. Larry Boyd
- (2) Dr. Ray Garza
- (3) Dr. Charles Jennett

Issued in College Station, Texas on May 3, 1996.

TRD-9606228

Vickie Running  
Executive Secretary of the Board of  
Regents  
The Texas A&M University System

Filed: May 6, 1996

◆        ◆        ◆

## Texas Department of Transportation

### Public Hearing Notice

Pursuant to Transportation Code, §§21.108-21.111 and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation will conduct a public hearing to receive comments from interested parties concerning the proposed approval of a three-year capital improvement program-1997-1999.

The public hearing will be held on Tuesday, May 28, 1996, 9:00 a.m., at 150 East Riverside, Room 309C South, Austin, Texas 78704. Any interested person may appear and offer comments or testimony, either orally or in writing, however, questioning of witnesses will be reserved exclusively to the presiding officer or its staff as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588. Requests should be made no later than two working days prior to the hearing. Every reasonable effort will be made to accommodate these needs.

For additional information please contact Suetta Murray, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4504.

Issued in Austin, Texas, on May 7, 1996.

TRD-9606321

Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Filed: May 7, 1996



## Texas Workforce Commission

### Request for Proposals

In accordance with the Job Training Partnership Act (JTPA), Public Law 97-300 as amended August 6, 1992, the Texas Workforce Commission (Commission) announces a Request for Proposals (RFP) to operate Title III Rapid Response Services within Texas on behalf of the State. Due to the nature of Rapid Response, procurement of potential service providers must be accomplished in advance of actual layoffs in order to activate contracts and implement service provision within the necessary time constraints, usually five calendar days from the announcement of the layoff. Rapid Response services are designed to provide immediate assistance to laid-off workers in the form of guidance and tools for coping with the layoff.

This RFP is being issued to seek additional potential service providers. Vendors already included in the Rapid Response Vendors List need not respond unless they wish to change the terms of a response filed earlier. Responses will be reviewed and evaluated by the Commission and if determined to be responsive to the requirements, will be placed on the Rapid Response Vendors List.

Detailed information regarding the project format is set forth in the Request for Proposals instructions which will be available on or about May 10, 1996 at the following location: Texas Workforce Commission Workforce Development Division 211 East 7th Street, Suite 1000 Austin, Texas 78701.

The deadline for receipt of initial responses to this request will be Friday, June 7, 1996 at 4:00 p.m.(CDT).

A Proposers' Conference will be held on Wednesday, May 22, 1996 beginning at 10:00 a.m. (CDT) at the following location: Texas Workforce Commission 12th and Trinity Room 302T Austin, Texas.

All interested parties are invited to attend. Persons with disabilities who plan to attend this conference and who

may need auxiliary aids or services should contact Enrique M. Barrera at least two working days before the conference so that appropriate arrangements can be made.

The Commission reserves the right to accept or reject any or all responses submitted. The Commission is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided to be used only as a means of identifying various contractor alternatives. The Commission may use responses as a basis for further negotiation of specific project details with potential contractors. The Commission will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria provided in the Request for Proposals instructions.

This RFP does not commit the Commission to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the Commission to award a contract or to pay any costs incurred in the preparation of a response. The Commission specifically reserves the right to vary all provisions set forth herein and in the Request for Proposals instructions any time prior to execution of a contract if the Commission deems it to be in the best interest of the State of Texas to do so.

For further information regarding this notice, or to obtain copies of the RFP instructions, please contact: Enrique M. Barrera, Texas Workforce Commission, Workforce Development Division, 211 East 7th Street, Suite 1000, Austin, Texas 78701, (512) 936-0344.

Issued in Austin, Texas, on May 6, 1996.

TRD-9606224 Carol Kingsberry Otto  
Attorney, Intergovernmental Relations  
Texas Workforce Commission

Filed: May 6, 1996

◆ ◆ ◆

# *Texas Register*

## Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

### **Texas Natural Resource Conservation Commission, Title 30**

- ☐ **Chapter 285** \$20    ☐ update service \$15/year (*On-Site Wastewater Treatment*)  
☐ **Chapter 290** \$20    ☐ update service \$15/year (*Water Hygiene*)  
☐ **Chapter 330** \$45    ☐ update service \$15/year (*Municipal Solid Waste*)  
☐ **Chapter 334** \$35    ☐ update service \$15/year (*Underground/Aboveground Storage Tanks*)  
☐ **Chapter 335** \$25    ☐ update service \$15/year (*Industrial Solid Waste/Municipal Hazardous Waste*)

Update service should be in ☐ printed format    ☐ 3 1/2" diskette    ☐ 5 1/4" diskette

### **Texas Workers Compensation Commission, Title 28**

- ☐ Update service \$25/year

### **Texas Register Phone Numbers**

Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 463-5564
Texas Administrative Code	(512) 463-5565

### **Information For Other Divisions of the Secretary of State's Office**

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 463-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Public Officials	(512) 463-5552
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

☐ **Change of Address**

☐ **Back Issue**

\_\_\_\_\_ Quantity

Volume \_\_\_\_\_,

Issue # \_\_\_\_\_

*(Prepayment required  
for back issues)*

☐ **New Subscription (Yearly)**

Printed

☐ \$95

Diskette

☐ 1 to 10 users \$200

☐ 11 to 50 users \$500

☐ 51 to 100 users \$750

☐ 100 to 150 users \$1000

☐ 151 to 200 users \$1250

More than 200 users--please call

Online BBS

☐ 1 user \$35

☐ 2 to 10 users \$50

☐ 11 to 50 users \$90

☐ 51 to 150 users \$150

☐ 151 to 300 \$200

More than 300 users--please call

NAME \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

Customer ID Number/Subscription Number \_\_\_\_\_

*(Number for change of address only)*

☐ **Bill Me**

☐ **Payment Enclosed**

Mastercard/VISA Number \_\_\_\_\_

Expiration Date \_\_\_\_\_ Signature \_\_\_\_\_

Please make checks payable to the Secretary of State. Subscription fees are not refundable.  
Do not use this form to renew subscriptions.

\_\_\_\_\_  
\_\_\_\_\_  
Second Class Postage

PAID

Austin, Texas  
and additional entry offices  
\_\_\_\_\_  
\_\_\_\_\_